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Supreme Court of the United States

OCTOBER TERM, 1964

No. 139

UNITED AIR LINES, INC., PETITIONER,

vs.

NATIONAL MEDIATION BOARD, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 1, 1964
CERTIORARI GRANTED OCTOBER 12, 1964

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Civil Docket.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA.

United Air Lines, Inc.
vs.
National Mediation Board; Leverett Edwards, Individually and as Chairman of the National Mediation Board; Francis A. O'Neill, Jr., Individually and as Member of the National Mediation Board

Number 402-63, Action for Injunction.

Attorneys:

James Francis Reilly, 1625 K St., N. W.

John W. Douglas, Donald B. MacGuineas, Harlan F. Leathers, Richard S. Beatty, Dept. of Justice.

1963		
Feb. 12	Complaint, appearance	filed
Feb. 12	Summons, copies (5) and copies (5) of Complaint issued D. A. Ser. 2-13-63 A. G. Ser. 2-14-63 (#1, 2, 3 Ser. 2-13-63).	
Feb. 21	Motion of pltf for preliminary injunction; P&A; affidavits (3); c/m 2/21/63; MC 2/21/63. Exhibits A thru V.	filed
Mar. 8	Opposition of defts to motion for preliminary injunction; P & A; c/m 3-8-63. App. John W. Douglas, Donald B. MacGuineas, Harlan F. Leathers and Richard S. Beatty.	filed

Mar. 8 Motion of defts to dismiss or for summary judgment; P & A; Statement; Exhibits 1-11; Affidavit; c/m 3-5-63. M. C. filed

Mar. 18 Supplemental affidavit of Charles M. Mason in support of pltf's motion for preliminary injunction; exhibits A & B. filed

Mar. 18 Opposition of pltf to motion to dismiss or for summary judgment; c/m 3/18/63. filed

Mar. 21 Reply memorandum of defts in support of motion to dismiss or for summary judgment; affidavit; c/m 3/21/63. filed

Mar. 25 Order granting motion of defts for summary judgment; dismissing complaint with prejudice; and, dismissing motion for preliminary injunction as moot. (N) Matthews, J.

Mar. 27 Notice of appeal by pltf from order 3/25/63. Deposit by Reilly $5.00. Copy mailed to H. Leathers. filed

Apr. 2 Cost bond on appeal in sum of $250.00 with Hartford Accident & Indemnity Co., approved. (fiat) Jones, J.

Apr. 12 Record on appeal delivered to USCA forthwith. Deposit by Reilly $.95.

Apr. 12 Receipt from USCA for original papers. filed

Apr. 12 Order directing Clerk to transmit entire original file to USCA forthwith. (N) Micro 4/10/63 Matthews, J.

IN THE UNITED STATES DISTRICT COURT
For the District of Columbia

United Air Lines, Inc., O'Hare International Airport, P. O. Box 8800, Chicago 66, Illinois,
Plaintiff.

v.

National Mediation Board; Leverett Edwards, Individually and as Chairman of the National Mediation Board; Francis A. O'Neill, Jr., Individually and as Member of the National Mediation Board, 1230 Sixteenth Street, N. W., Washington, D. C.
Defendants.

Civil Action, No. 402-63.

Complaint for Injunction.

Plaintiff, United Air Lines, Inc., by its attorneys, complains of defendants as follows:

1. This action arises under the Constitution of the United States and the Railway Labor Act (the "Act"), 45 U. S. C. § 151 et seq. Plaintiff seeks to enjoin defendants from (1) proceeding with a representation election under that Act among certain employees of plaintiff, or issuing any certification with respect thereto, unless and until defendants accord plaintiff the right to be heard as a party in interest on the appropriateness of the craft or class with respect to which such election will be held, and (2) conducting any such election with a form of ballot which does not allow an eligible employee to cast a vote against representation. The matter in controversy exceeds the sum of $10,000, exclusive of interest and costs. Federal jurisdiction is based on 28 U. S. C. §§ 1331 and 1337.

Count I.

2. Plaintiff is a corporation organized and existing under the laws of the State of Delaware and is a common carrier by air engaged in scheduled interstate air transportation within the continental limits of the United States, overseas to Hawaii, and internationally to Canada.

3. Defendant National Mediation Board (the "Board") is an agency of the United States Government established under the Act. Defendants Edwards and O'Neill are chairman and member, respectively, of the Board. All defendants are located within the District of Columbia.

4. The Act, which is applicable to air and rail carriers, provides that employees of a carrier shall have the right to organize and bargain collectively through representatives of their own choosing, and that the majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class. (Section 2, Fourth; 45 U. S. C. § 152, Fourth.) In the event of a dispute as to who are the representatives of the carrier's employees, the Board has the duty to investigate such dispute upon the request of either party to the dispute and to certify the names of the individuals or organizations authorized to represent the employees in the dispute. The carrier is then required to treat with such representative for the craft or class. (Section 2, Ninth; 45 U. S. C. § 152, Ninth.)

5. On or about August 24, 1962, the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees (the "Brotherhood"), a labor organization within the meaning of the Act, invoked the services of the Board under the provisions of Section 2, Ninth of the Act to investigate an alleged representation dispute among a group of employees of plaintiff described as the clerical, office, stores, fleet, and passenger service

employees, excluding certain stores and fleet service employees now represented by another labor organization, the International Association of Machinists (the "IAM"). The Board docketed the case as R-3590. After the IAM protested the grouping of employees described by the Brotherhood, the Brotherhood amended its application to describe the group of employees as the clerical, office, stores, fleet and passenger service employees, without any exclusions. The IAM and Brotherhood are recognized by the Board as parties in interest in R-3590.

6. The composition of a craft or class of employees for collective bargaining purposes affects valuable property rights of plaintiff in the conduct of its business. The craft or class the Brotherhood seeks to represent in Case R-3590 numbers approximately 12,700 employees of plaintiff. These employees perform work in many different and unrelated classifications, such as electronic computer operators, ticket agents, and cleaning women. The combining of these employees in a single craft or class for collective bargaining purposes will have a substantial and adverse impact on the operations and cost of conducting plaintiff's business.

7. Shortly after plaintiff was notified by the Board of its intention to conduct an election among the clerical, office, stores, fleet and passenger service employees of plaintiff, plaintiff requested the Board to conduct a hearing to determine the appropriateness of this grouping, and to permit plaintiff to participate in such hearing as a party in interest. This request was denied. The Board stated, in effect, that it would have conducted such a hearing if either labor organization involved had so requested, but that plaintiff as a carrier had no legal right to be heard or to demand a hearing on a craft or class question. Neither of the labor organizations involved requested such a hearing and accordingly, the Board, unless enjoined, will pro-

ceed with an election among plaintiff's employees in the grouping described in the Brotherhood's application as amended.

8. Plaintiff has a constitutional right to a hearing on the question of the composition of the craft or class of its employees with respect to which it may be required to bargain collectively with a majority representative. The action of the Board in denying plaintiff this right, and in arbitrarily and capriciously accepting the craft or class designation as agreed upon between the labor organizations involved without any hearing on or consideration of its effect upon plaintiff, constitutes a violation of plaintiff's constitutional right to due process under the Fifth Amendment to the United States Constitution.

9. If the Board should proceed with an election among the grouping of employees described in the application of Brotherhood, as amended, in Case R-3590, and if the Board should certify a representative for such grouping, plaintiff will be under a statutory duty to bargain collectively with such representative, and may be subject to criminal penalties under the Act if it refuses to do so. There is no statutory procedure for judicial review of Board proceedings. Therefore, plaintiff has no adequate remedy at law to vindicate its constitutional right to due process. Plaintiff will suffer irreparable injury to its business and property unless the Board is restrained from holding such election, or certifying such representative, without first according to plaintiff the due process to which it is entitled.

Count II.

10. Paragraphs 2, 3, 4 and 5 of Count I of this Complaint are hereby realleged and made a part of this Count II.

11. The Board intends to proceed with an election among the approximately 12,700 employees of plaintiff in

the grouping described in the application of the Brotherhood, as amended, in Case R-3590.

12. The procedures which the Board has stated it will follow in such election contravene the requirement of the Act that the majority of the employees in the craft or class shall have the right to elect a representative for the craft or class. The ballot which the Board intends to use in such election does not allow an eligible employee to cast a valid vote against representation, a right implicit in the provisions of the Act and clearly intended by Congress. Thus an employee who desires no representation can only express his intention by refusing to participate in the election.

13. The Board has stated that an election is valid if a majority of the eligible voters in the craft or class cast valid ballots. A majority of the valid ballots cast is deemed sufficient to elect a representative. A ballot is considered valid by the Board only if cast for a representative. A ballot upon which is written "no representative" or which is cast blank is not considered valid.

14. The Board procedures thus make it possible for a minority of eligible employees to elect a representative for the entire craft or class, contrary to the desires of the majority. For example: if of 13 employees eligible to participate in an election, six desire no representation at all, three desire Union A but no other union, and four desire Union B, there is no possible way under Board procedures for the six to cast a valid ballot; the remaining seven voters will then determine the election, being a majority of the 13 eligible employees, and the four votes for Union B will carry the election, being a majority of the seven. If the ballot included space for a vote against representation, as does the ballot used by the National Labor Relations Board under its procedures, then under the same example Union B would not have a majority and on a

run-off the vote would be four votes for Union B and nine votes for no representation.

15. Plaintiff has requested the Board to use a form of ballot which would permit an employee to cast a valid vote for or against representation in order to insure an accurate expression of the employees' desires, but the Board has refused to modify the form of ballot it intends to use.

16. The requirement that an employer bargain collectively with its employees is a limitation on its right to otherwise conduct its business free of restraint. It has been judicially determined that it is not an unreasonable restraint to legally require such bargaining with the true representative of a majority of employees for all employees in the bargaining group, including the dissenting or disinterested minority. The Act imposes only this limited duty. It is an unreasonable restraint on such right to require an employer to bargain with a representative on behalf of all employees in a bargaining group when the majority of employees in that group do not desire such representation.

17. The election procedures of the Board enlarge upon the limited statutory duty imposed on a carrier by the Act to treat with a representative determined by a majority of the employees in the craft or class and are therefore beyond the scope of the Board's statutory powers. The Board procedures impose an unreasonable restraint on the right of plaintiff to conduct its business since they do not insure that plaintiff will be required to deal only with a true representative of the the majority of employees within the craft or class. Hence these procedures constitute a deprivation of plaintiff's property rights without due process in contravention of the Fifth Amendment to the United States Constitution.

18. If the Board should proceed with an election with the form of ballot it has stated it intends to use and if a

representative is certified as a result of such election, it will be impossible to determine after such election whether the representative is the true representative of the majority of employees in the craft or class for which the election is held. If the representative receives a majority of the votes cast, but less than a majority of the total number eligible to vote in the election, then it will be impossible to determine whether the employees not voting did not vote because they desired no representative or whether they were indifferent. If the representative receives a majority of the total number eligible to vote in the election, then it will be impossible to determine what influence the form of ballot itself had on the voting of the employees who did participate and found themselves unable to vote against representation.

19. If the Board should proceed with an election in Case R-3590 with the form of ballot it intends to use and should the Board certify a representative as a result of such election, plaintiff will be under a statutory duty to bargain collectively with such representative, and may be subject to criminal penalties under the Act if it refuses to do so. There is no statutory procedure for judicial review of Board proceedings. Therefore, plaintiff has no adequate remedy at law to vindicate its constitutional right to due process or to redress the unauthorized acts of the Board. Plaintiff will suffer irreparable injury to its business and property unless the Board is restrained from holding such election without using a form of ballot which permits an employee to vote against representation.

WHEREFORE, Plaintiff prays that the Court issue a preliminary injunction to be made permanent upon final hearing:

A. Restraining defendants from conducting any election among plaintiff's employees, or certifying any representative with respect thereto, pursuant to Board Case

R-3590, or pursuant to any other proceeding before the Board, without first conducting a hearing and according plaintiff an opportunity to be heard as a party in interest on any question relating to the appropriateness of the craft or class of employees among whom any such election is to be held;

B. Restraining defendants from conducting any election among plaintiff's employees in any craft or class in which the form of ballot does not permit an eligible employee to cast a valid ballot against representation.

Plaintiff further prays for such other and further relief as this Court shall deem just and proper.

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Of Counsel.

IN THE UNITED STATES DISTRICT COURT
For The District of Columbia

(Caption)

Motion for Preliminary Injunction.

Now Comes United Air Lines, Inc., plaintiff herein, by its attorneys, and pursuant to Rule 65 of the Federal Rules of Civil Procedure, moves the Court to enter a preliminary injunction, and states in support thereof as follows:

1. Plaintiff's verified complaint for injunctive and other relief, was filed herein on February 12, 1963.

2. As more fully appears from the affidavits filed herewith of Charles M. Mason, C. P. Hutchens and David S. Ritner and said verified complaint, defendants will proceed to hold an election among a group of plaintiff's employees before trial can be had, in violation of plaintiff's statutory and constitutional rights, and to plaintiff's irreparable injury.

Wherefore plaintiff moves the Court to enter a preliminary injunction:

A. Restraining defendants from conducting any election among plaintiff's employees, or certifying any representative with respect thereto, pursuant to National Mediation Board Case R-3590, or pursuant to any other proceeding before the National Mediation Board, without first conducting a hearing and according plaintiff an opportunity to be heard as a party in interest on any question relating to the appropriatess of the craft or class of employees among whom any such election is to be held;

B. Restraining defendants from conducting any election among plaintiff's employees in any craft or class in which the form of ballot does not permit an eligible employee to cast a valid ballot against representation.

Pursuant to Rule 9(b) of the Rules of this Court, plaintiff requests oral hearing on this motion.

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Of Counsel.

IN THE UNITED STATES DISTRICT COURT.
For the District of Columbia

(Caption)

Affidavits of Charles M. Mason,
C. P. Hutchens and Davis S. Ritner

In Support of Plaintiff's Motion
For Preliminary Injunction

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Affidavit

CHARLES M. MASON, being first duly sworn, on oath deposes and says:

1. I am Senior Vice President, Personnel, United Air Lines, Inc. ("United").

2. United is a corporation organized and existing under the laws of the State of Delaware and is a common carrier by air engaged in scheduled air transportation within the continental limits of the United States, overseas to Hawaii, and internationally to Canada, and is subject to the provisions of the Railway Labor Act ("Act") and the Federal Aviation Act.

3. On August 24, 1962, The Brotherhood of Railway and Steampship Clerks, Freight Handlers, Express and Station Employees ("Brotherhood"), a labor organization and representative within the meaning of Section 1, Sixth of the Act, invoked the services of the National Mediation Board ("Board") to investigate pursuant to Section 2, Ninth of the Act a representation dispute alleged to exist among certain United employees. The case was docketed by the Board as R-3590. The employees designated by the Brotherhood as involved in the dispute were described as follows:

> "Commonly known as clerical, office, stores (excluding stores employes represented as of August 24, 1962, by the International Association of Machinists), fleet (excluding fleet service employes represented as of August 24, 1962, by the International Association of Machinists) and passenger service employes."

By letter dated August 27, 1962, Mr. George M. Harrison, Grand President of the Brotherhood, requested the Board to permit former employees of Capital Air Lines, even though excluded from the "craft or class" designation,

to participate in the election. A copy of this letter is attached hereto as Exhibit A.

4. On August 30, 1962, the Board advised me of the Brotherhood's application and requested me to furnish the total number of employees involved. A copy of the Board's letter is attached hereto as Exhibit B. My reply dated September 7, 1962, is attached hereto as Exhibit C. My letter dated November 2, 1962, furnishing the information requested by the Board is attached hereto as Exhibit D. On September 11, 1962, Mr. A. J. Hayes, International President, International Association of Machinists ("IAM"), advised the Board that the craft or class of employees designated by the Brotherhood did not conform to prior Board determinations of craft or class. A copy of Mr. Hayes' letter is attached hereto as Exhibit E. The Brotherhood's original application would have excluded from the group for which certification was sought all United employees represented as of August 24, 1962, by the IAM. On August 29, 1962, the Brotherhood advised the Board that it meant by its original application to exclude only incumbent United employees represented by the IAM under agreements effective on or prior to August 24, 1962, but that employees represented by IAM by virtue of any agreement entered into with United after August 24, 1962, were to be included. A copy of Mr. Harrison's letter is attached hereto as Exhibit F. On October 5, 1962, the Brotherhood amended its original statement of the craft or class to substitute a comprehensive group of United employees described as "clerical, office, stores, fleet and passenger service employees" without exclusion of employees represented by the IAM. A copy of the Brotherhood's letter of amendment is attached hereto as Exhibit G.

5. This comprehensive group numbers approximately 12,700 employees, or more than one-third of a total work force at United of approximately 32,000 employees. It in-

clude employees performing such varied work as (1) office and clerical (approximately 4,500), (2) ramp and stores (approximately 3,050), and (3) public contact work, including sales, reservation, and ticket agent work (approximately 5,100). Their salary range is $280 to $730 per month. Of the 12,700 employees involved, the approximately 3,050 ramp and store employees are currently represented for bargaining purposes by the IAM, and have been so represented since 1948. The remainder, or approximately 9,700, are not now represented at United by a labor organization, and never have been.

6. By letter dated October 8, 1962 (Exhibit H attached hereto) and addressed to Mr. Harrison, a copy of which I received, the Board requested me to furnish on behalf of United the number of employees in the amended "craft or class" sought to be represented by the Brotherhood. I concluded from this that the Board had adopted the Brotherhood's amendment of the "craft or class" and would proceed with its investigation of the alleged representation dispute among the 12,700 United employees involved. Attached hereto as Exhibits I and J, respectively, are copies of Mr. Hayes' letter to the Board dated October 23, 1962, and Mr. Harrison's letter to the Board dated October 26, 1962, which relate to allegations of inter-union raiding.

7. The "craft or class" of United employees in which the Board will proceed with an election to select a bargaining representative is completely inconsistent with United's organizational structure which is based upon classification by job function. There is a wide variance in job duties within the "craft or class." The employees are distributed in entirely different departments of the company, and share no identity of bargaining interest. Functionally, they are divided as follows:

1. Office and clerical employees.

2. Public contact employees.
3. Ramp and stores employees.

Entirely apart from the operational and organizational problems with which United will be faced in attempting to administer conglomerate categories of employees as a single unit, United will also be faced with the formidable problem of attempting to reach labor agreement with a single representative bargaining for employees with varying duties, interests and working conditions. In my judgment, this will result in substantial and continuing impairment of United's ability to avoid labor disputes.

8. For these reasons I urged the Board, by letter dated January 11, 1963, to hold a public hearing at which United could offer evidence bearing on the craft or class question. A copy of my letter is attached hereto as Exhibit K. I stated:

> "We wish to point out to the Board that the group of employees covered in the representation application filed in the above case does not coincide, either in its original or amended form, with any currently applicable craft or class determination. Further, there are distinguishing features between the members of the heterogeneous group of employees involved in this application which the Board has not had the opportunity to fully consider in any prior proceedings. At a public hearing, the Board will learn of the wide variances in the training, skills and responsibilities of the employees, of the absence of cross-training and cross-utilization between them, and of the absence of a community of interest, for example, between the highly skilled office employees and the janitorial and cleaning employees. The lack of unanimity in the air transport industry in general and on United in particular with reference to the organization of operations, the selection, training, use, representation and lack of permanency in respect to these factors in this dynamic and rapidly changing industry can and should be considered by the Board."

I pointed out to the Board that the "craft or class" of clerical, office, stores, fleet and passenger service employees was established by the Board in 1946 (Case No. R-1706) at a time when the Board had no knowledge of the changes that would and did later occur in the air transport industry. I stated:

> "In 1946, in R-1706, the Mediation Board was asked to establish for the first time on an airline a craft or class grouping of employees ranging from what the Board referred to as janitors and laborers to the highest type of technical office employees. The Board attempted in that case to establish a mold to apply to all airlines in the future. Since most of the employees in this heterogeneous grouping were unorganized at the time in the air transport industry, the Board was forced to treat with the important subject of craft or class in somewhat of a vacuum with the 'hope' that its prospective determination would provide a basis for stable labor relations in the *future* on *airlines* only because such a craft had been found to provide such a basis in the *past* on *railroads*. Although the Board did avoid a multiplicity of crafts or classes by its determination in R-1706, the Board simply did not have knowledge at the time of its decision (January 31, 1947) of the changes that would and did later occur in the air transport industry."

9. By letter dated January 17, 1963, the Board turned down my request for a hearing, stating:

> "The various comments made in the remainder of your letter of January 11, 1963 have been given careful consideration by the Board. The Board wishes to call your attention, first, to the fact that the carrier is not a party to this representation dispute. Secondly, no request for a review of the craft or class established by the Board's determination in Case No. R-1706, et al has been received from either organization party to NMB Case No. R-3590. The request contained in your letter of January 11, 1963, is not timely made, since

the Board, on December 19, 1962, found that a representation dispute existed among the employees in this craft or class, and has authorized an election.

"For the above reasons, the Board must deny your request of January 11, 1963 for a public hearing on the subject of a review of the determination made in Case No. R-1706, et al."

A copy of this letter is attached hereto as Exhibit L.

10. On January 25, 1963, I again wrote the Board to urge that it conduct a public hearing to establish the proper craft or class at United and "determine, in light of the lapse of 15 years, and the other factors set out in our letter of January 11, whether the R-1706 determination was still a proper grouping." I stated:

"Finally, the imposition by the Board of an inappropriate railroad craft or class upon 12,700 employees of this dynamic and changing air transportation industry is illogical. The 'clerical, office, station, and storehouse employees craft or class' grew up out of the historical development of the railroad industry. To say that a craft or class springing from the history of the then static and now declining railroad industry should be forcibly imposed on the airline industry, which has an entirely different history and is still growing, is illogical and improper. If the Board restricts air carriers to railroad rigidity, United will not be able to discharge fully the obligation imposed upon it by Congress through the Federal Aviation Act to provide efficient and economical service at reasonable charges to the public. In fact, my personal observations of the operations and organization of Capital Air Lines before Capital had to be merged into United or face bankruptcy convinced me that part of Capital's difficulties resulted from the Board's action in 1947 in forcing a vast and heterogeneous group of employees into a single craft or class because that craft or class had been satisfactory on railroads in the past and the Board 'hoped' it would be in the future on airlines."

A copy of this letter is attached hereto as Exhibit M. On February 4, 1963, the Board rejected my renewed request for a hearing. A copy of the Board's letter is attached hereto as Exhibit N.

11. On January 18, 1963, I protested the form of ballot which the Board intended to use in the election among the United employees. A copy of this letter is attached hereto as Exhibit O. The Board form of ballot, a specimen of which is attached at Exhibit P, contains no space to permit an eligible employee to vote against representation, but on the contrary requires the employee to select one of the organizations listed on the ballot, except that a blank line is provided for writing in any other organization or individual desired by the voter to represent him. Thus, the ballot *requires* the employee to select a representative despite the possibility that the voter may desire no representation at all. I advised the Board that the applicable legislative history of the Railway Labor Act, as well as authority addressed to the specific question of the propriety of this form of ballot, indicated that such form of ballot was improper. I urged the Board to revise its election procedures "so that our employees and employees of other carriers in future elections will have an opportunity to express their decision on all of the choices that are available to them, one of which is to remain unrepresented." On January 22, 1963, Mr. William A. Patterson, President of United, wrote to the Board urging a review of its election procedures with respect to the form of ballot used. Mr. Patterson stated:

> "As I understand it, the ballot furnished to the employees by the National Mediation Board plainly states that purpose of the election is for the employees to designate a union to represent them—not whether they want a union and, if they do, which one. Also the ballot has on it only the name of the one or more unions desiring to represent the employees and a blank space

for the employees to vote for some other organization or individual not named on the ballot. This certainly leaves the employee with the inference that he has no choice but to vote *for* some union to represent him. Additionally, the Mediation Board does not tell the employee at any time how to express his choice if he wishes to remain unrepresented by a union."

A copy of this letter is attached hereto as Exhibit Q.

12. On January 24, 1963, the Board replied to my letter which had objected to the form of ballot. A copy of this letter is attached hereto as Exhibit R. After stating that the Board "has consistently held [,] a carrier is not a party to a representation dispute involving the selection of a representative of its employees," the Board summarized its election practices as follows:

> "As you state in your letter, the form of ballot previously used was adopted by the Board in 1934 and has been used since that time as the form best designed to ascertain the representation desires of a carrier's employees for the purpose of collective bargaining. The blank line appearing on the present form of ballot affords an opportunity to the voter to vote for some organization or individual other than those named on the ballot, or he may refrain from voting at all if he so chooses. There is no compulsion that he vote for a contestant for representation. Introduction of a 'yes' or 'no' ballot would contribute to, if it did not actually encourage, an attempt to circumvent the mandate of Congress that representatives be designated by carriers and their employees for the purposes described in Section 2, First and Second of the Railway Labor Act, . . ."

13. On February 1, 1963, I wrote in reply to the Board's letter on January 24, 1963, and renewed my plea that the Board review its election procedures with reference to the form of ballot. A copy of this letter is attached hereto as Exhibit S. The Board denied my request by letter dated

February 7, 1963, a copy of which is attached hereto as Exhibit T, and stated, "The Board will proceed with an election among the employees concerned in NMB Case No. R-3590 under the Board's usual policies and procedures in such cases."

14. On January 25, 1963, the Board issued a "Statement" in response to a "large number of telegrams and letters from individuals and groups signing themselves as employees of United" summarizing the Board's reasons for denying a craft or class hearing requested by United, and for rejecting United's request that the form of ballot be altered. A copy of this statement is attached hereto as Exhibit U. It states:

> "This craft or class was found by this Board in Case No. R-1706 et al. to be the appropriate grouping of these employees for representation purposes under Section 2, Ninth of the Railway Labor Act. Case No. R-3590 is being investigated on that basis. The parties to this dispute are the Brotherhood of Railway & Steamship Clerks, who invoked the Board's services, and the International Association of Machinists, AFL-CIO, which organization now represents the Stores, Ramp and Fleet Service Employees of United, also a number of employees performing janitorial service. United Air Lines, Inc. is not, and cannot be, a party to this representation dispute.
>
> "On September 7, 1962, and January 11, 1963, United Air Lines requested this Board to hold a hearing to establish the proper crafts or classes on United which are involved in this dispute. The Board, on January 17, 1963 replied to United, pointing out the fact that the carrier is not a party to this matter, and also pointing out that neither of the organizations who are parties to this case have made any request for a hearing on the question of craft or class. The Board, therefore, denied the request of United for such a hearing.
>
> "On January 18, 1963 United Air Lines protested the form of ballot customarily used by this Board, and re-

quested that the Board revise its election procedures so that the ballot would contain a space for a vote for no representation. The Board on January 24, 1963 replied to United calling attention to the fact that the Board's present form of ballot, adopted in 1934, was designed to ascertain the representation desires of a carrier's employees for collective bargaining under the Railway Labor Act. The Board's standard form of ballot carries lines for voting for the contesting parties, and a blank line on which a voter may vote for some organization or individual other than those named on the ballot. There is no compulsion that he vote for a contestant for representation."

15. In elections conducted under the Board's auspices, a majority of the eligible voters *participating* in the election, and not the majority of the *voters eligible*, decides the outcome of the election. In order for an election to be valid, however, a majority of the eligible voters must participate. An eligible voter who refrains from voting in order to effectuate a desire that he remain unrepresented disenfranchises himself to no purpose since a majority of those voting will determine the result. Only if a majority of the eligible voters do not cast votes will such disenfranchisement have any effect. A voter who marks "no union" or "no representation" on the ballot also disenfranchises himself to no purpose for the reason that the Board considers such ballot void and as though not cast. The Board's instructions to the employees at the time of the election make no reference to these rules. The employee is advised that the ballot is being taken "in order to ascertain and to certify" a representative and is told only how to vote *for* a representative. See Exhibit P.

16. Under the National Labor Relations Act, as amended (NLRA), the practices with regard to representation of employees differ from the practices followed by the Board both with respect to employer participation in

hearings and the form of ballot. Under the NLRA an employer is accorded party status to a hearing (required by the NLRA) addressed to the scope of the bargaining unit. With respect to the form of ballot, the National Labor Relations Board provides a space on the ballot to enable an eligible voter to vote against representation, should he so desire. A specimen form of ballot used by the National Labor Relations Board is attached hereto as Exhibit V.

17. In paragraph 7 of this Affidavit I have set forth the facts with respect to the impact of an inappropriate craft or class determination upon United's administrative system. Additionally, however, it is my judgment that the representation by a single organization of heterogeneous groups is neither practical nor productive of harmonious labor relations. The following examples will suffice:

(a) Seniority provisions often permit inter-group promotion, assignment and displacement. If seniority is on a company-wide basis, an employee in one group can exercise seniority to fill vacancies in another group resulting from promotion, reassignment, lay-off or increase in the work force. Although an employee may have the minimum ability to perform the job in another group to which seniority entitles him, expensive on-the-job training is required to fit him for the particular duties involved. More specifically, seniority will often entitle an employee hired for clerical or ramp and store work to demand work in the public contact group for which his or her training and personality are inadequate. This will result in reduction of quality of service to the public, and therefore the sales, of the carrier.

(b) In a single craft or class which embraces separate groups, the tendency of the bargaining representative is to favor, with respect to wages, working condition, and grievance processing, a group or groups

which are numerically superior within the craft or class for which the representative speaks. In the usual case, skilled employees are in the minority. The carrier finds itself in the position, by reason of bargaining exigencies, of paying the unskilled majority of its employees proportionately more in terms of their respective worth than the skilled minority, causing discontent and morale problems among the latter group. This results in a high turn-over and reduced efficiency among the disfavored group.

(c) Employees identify with others primarily by job functions. There is little community of interest between, for example, ramp employees and clerical personnel. Public contact personnel consider themselves a group apart. Each group inevitably resents any alleged preference in pay or working conditions received by another group. If the groups are combined in a single craft or class creating an artificial semblance of identity, each group deems itself entitled to no less than what is received by the others. The carrier, as well as the organization representing the craft or class, adopt the so-called leveling policy of paying a premium for work in the lower classifications with the consequence that wages and benefits in the higher classifications are depressed. This occurs because of the effort to avoid wide variance in benefits within the group even though, in terms of contribution by the employees, such variance is justified. The pressures created by an artificial and illogical grouping of diversely occupied employees substantially impairs the efficiency of the entire organization.

(d) Where functionally separate groups are combined in a single craft or class, serious administrative problems arise in attempting to reconcile the varying work problems and conditions applicable by reason of

the functional separation. The carrier is commonly faced with demands by personnel for benefits to counterbalance the purported advantage possessed by other personnel with dissimilar work situations. The tendency, repeated in many variations, is to insist upon equality of benefits within the craft or class despite the impossibility of comparison.

18. The Board has not conducted any hearing or inquiry into the "craft or class" of United employees in which an election has been directed. It has accepted the Brotherhood's amended designation of the "craft or class" without hearing, for the announced reason that it was "agreed upon" by the Brotherhood and IAM, and because a carrier cannot be a party to a representation dispute. Consequently, United has been unable to present evidence to the Board of the variance in the duties of the employees involved and of the technological development in the airline industry. The craft or class of "clerical, office, stores, fleet and passenger service employees" was first established for bargaining purposes in the airline industry in Board case R-1706 in January, 1947. Such craft or class had been in effect on the railroads for many years and the underlying purpose of the Board hearings in R-1706 (held in 1946) was to determine whether a comparable craft or class was suitable for the airlines. The Board stated in R-1706:

> "If airline employees in jobs comparable to those in the craft or class of railroad clerical, office, station, and storehouse employees fulfill these essential considerations of craft or class, then it follows that such an airline craft or class can be determined. On the other hand, if these considerations are not fulfilled, a different determination of craft or class for airline employees would be in order."

The Board then proceeded to examine the duties of the airline employees involved and found that the "similarity

between functions performed by railroad workers in the craft or class of clerical, office, station and storehouse employees are closely similar to those described herein under the heading" of:

"a. Clerical and office employees including office attendants,
b. Stores employees,
c. Fleet service employees,
d. Passenger service employees."

19. This basis for the Board's determination in R-1706 no longer exists. R-1706 was decided shortly after World War II in the early period of airline growth. The airline industry, as distinguished from the railroads, was still in the formative stage and in a period of expansion with strong prospects of further technological change. The assumption at that time was that operational developments in the airline industry as it matured would parallel the railroad industry. The predicted parallel development has not in fact occurred. Moreover, the history of collective bargaining in the airline industry since 1947 has demonstrated that the Board's determination in R-1706 has not been suitable for airlines. On the major air carriers, the organization of employees for bargaining purposes, which almost invariably follows functional lines, has not in fact conformed to the prediction of such organization which formed the basis of the R-1706 findings. Thus, despite the lapse of 16 years since the R-1706 determination, the craft or class there determined as appropriate for airlines is represented as a single unit on only 12 of the 28 air carriers. In particular, developments at United in the 16 years since R-1706 established that a comprehensive craft or class appropriate to the railroads is simply not feasible at United. Unlike the railroads, United has experienced tremendous expansion since the end of World

War II necessitating administration of employees by job function. Secondly, United employees in this comprehensive grouping have in fact divided along functional lines. Since 1948 all ramp and stores employees have been organized and represented by the IAM. The clerical and public contact personnel, on the other hand, have never organized for collective bargaining purposes at United.

20. The Board often conducts hearings in its investigation of representation disputes, especially when craft or class issues have been raised. The Board usually solicits the views of the carrier and asks the carrier to submit the data which the Board deems pertinent under the criteria it has established to govern craft or class findings. The Board has stated (R-1706):

> "In these cases, as in all others, where disputes arise over the question of craft or class the Board gives considerations to all relevant elements most important of which is the intent of the Railway Labor Act in settling disputes and promoting stable labor relations. Individual cases require consideration of facts peculiar to particular situations, but, in addition, there are general factors to be considered. These include the composition and relative permanency of employee groupings along craft or class lines on carriers generally as well as on particular carriers. The extent and effectiveness of past collective bargaining arrangements, the functions, duties and responsibilities of the employees, the general nature of their work and the community of interest existing between jobs are other factors considered. Previous decisions of the Board which bear upon the issues of the particular dispute are also taken into account."

The Board has not consistently adhered to its R-1706 findings but has departed from them when facts were developed which established inappropriateness of the craft or class at a particular carrier. Thus in the same year R-1706 was decided the Board denied a petition for reconsidera-

tion thereon, stating, however, that its denial did not prevent a re-examination of craft or class as applied to these categories of employees in any future airline representation disputes. See Exhibit K, p. 2. This statement was made by the Board "in recognition of the fact that the airline industry was still in a state of development" and for the further reason that "the clerical and related employees on many of the major air carriers were then unrepresented." This attitude on the part of the Board resulted in later decisions in which the Board departed from its R-1706 finding and authorized elections among employees who constituted but a part of the R-1706 craft or class. Thus as early as 1949, United advised the Board that changes and developments in operational organization at United after R-1706 were such that the R-1706 determination was impractical both from United's and the employees' point of view, and in 1953 (R-2357) the Board stated that because of the "expansion and growth in the airline industry, as well as the development of the representation of airline employees," it was of the opinion that upon proper application, it would be advisable to re-examine the determination in R-1706, with a view to making such modifications as might be found to be justified at the time in question. In February, 1954 (R-2783) the Board did in fact re-examine the findings in R-1706 and concluded, after hearing that *stores* employees at Northwest Airlines constituted a separate craft or class. The Board reaffirmed the separateness of the stores employees in 1956 (C-2252 and C-2389) stating that the representation of the entire "clerical" unit as authorized in R-1706 showed that this "craft or class" was represented as a single unit on only six carriers, only three of which were trunk carriers. Despite these previous pronouncements, and without hearing the evidence, the Board has now reverted to the obsolete findings of R-1706 in insisting that stores employees

shall be combined with clerical, office, fleet and passenger service employees.

21. The refusal of the Board to conduct a hearing on the appropriateness of the craft or class vitally affects the business and property of United and deprives it of procedural due process of law.

/s/ CHARLES M. MASON.

Subscribed and Sworn To before me this ..... day of ....., 1963.

.....

Notary Public.

Exhibit A

Grand Lodge

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES
Brotherhood of Railway Clerks Building,
Cincinnati 2, Ohio.

Geo. M. Harrison,
Grand President.

National Mediation Board
File 230-449-7

Subject: Organization—
United Air Lines, Inc.

August 27, 1962

Air Mail

Mr. E. C. Thompson, Exec. Secy. (2)
National Mediation Board
Washington 25, D. C.

Dear Sir:

Please be referred to my letter of August 24, 1962, requesting the services of the National Mediation Board, under Section 2, Ninth, of the Railway Labor Act, as amended, for the purpose of securing certification as to who is the representative designated and authorized, in accordance with the requirements of the Act, of the following craft or class of employes of United Air Lines, Inc.:

> Commonly known as clerical, office, stores (excluding stores employes represented as of August 24, 1962, by the International Association of Machinists), fleet

(excluding fleet service employes represented as of August 24, 1962, by the International Association of Machinists) and passenger service employes.

It is our position that all employes of United Air Lines, Inc., who were formerly in the employ of Capital Airlines in the craft or class for which our Organization was certified by the National Mediation Board as the collective bargaining agent, shall be given the right to vote in any secret ballot conducted by the National Mediation Board for the following reasons:

1. In Interpretation No. 93, Case No. 2-6037, the National Mediation Board found:

> "* * *, this Board is of the opinion that the language of Article 1(b) of the agreement of August 3, 1959, reading 'all provisions of this agreement shall be binding upon the successors and assigns of the company' is clear and unambiguous. In other words, the language means just what it says and we so find."

2. The agreement between the Brotherhood of Railway Clerks and Capital Airlines has an effective date of August 3, 1959, and provides in Article 44 that it "shall continue in full force and effect until February 1, 1962, and thereafter unless thirty (30) days written notice is served by either party signatory hereto as provided in the Railway Labor Act, amended." Neither Capital prior to the effectuation of the merger with United, nor United subsequent to the merger, has served a notice upon our Organization in accordance with the provisions of the Railway Labor Act, as amended, as provided for in Article 44 of the agreement between our Organization and Capital Airlines, mentioned above.

3. Article 3, paragraph (a), of the above-mentioned agreement between Capital Airlines, Inc., and the Brotherhood of Railway Clerks establishes the seniority districts of the employes of Capital in the craft or class commonly

known as clerical, office, stores, fleet and passenger service employes. Seniority District No. 1, as provided by Article 3, paragraph (a), of that agreement, is composed of "General Offices and Stores." Employes engaged in the performance of Stores work hold seniority on a systemwide clerical roster, known as Seniority District No. 1 Roster, covering all General Office and Stores Department employes. Thus, the employes engaged in the occupations on that seniority roster for Seniority District No. 1 held seniority which was valid for exercising rights to all positions engaged in the performance of General Office work as well as all clerical positions in the Stores Department not represented by the I. A. M. on United.

4. Article 3, paragraph (a), of the above-mentioned agreement between Capital Airlines, Inc., and the Brotherhood of Railway Clerks establishes the seniority districts of the employes of Capital in the craft or class commonly known as clerical, office, stores, fleet and passenger service employes. Seniority District No. 2, as provided by Article 3, paragraph (a), of that agreement, is composed of "All Field Stations." Employees engaged in the performance of fleet service held seniority on a systemwide clerical roster, known as Seniority District No. 2 Roster, covering Cargo, Operations, Reservations, Ticketing, Sales, etc. Thus, the employes engaged in the occupations on that seniority roster for Seniority District No. 2 held seniority which was valid for exercising rights to all positions engaged in the performance of work of Operations, Ticketing, Reservations, Sales, etc., which are not represented by I. A. M. on United, in addition to the positions engaged in the work of Cargo Handling and Cabin Service which are represented by the I. A. M. on United.

5. The Civil Aeronautics Board, in Docket 11699, issued Order No. E-16605—In the matter of the United-Cap-

ital Merger Case—which provided in Item 2, paragraph (c), as follows:

> "That, except as noted below, United shall be subject to the labor protective provisions set forth in the appendix to this order."

Section 3 of Appendix A—Labor Protective Provisions —to the Civil Aeronautics Board's order, reads as follows:

> "Insofar as the merger affects the seniority rights of the carriers' employes, provisions shall be made for the integration of seniority lists in a fair and equitable manner, including, where applicable, agreement through collective bargaining between the carriers and the representatives of the employes affected. * * *"

This provision requires the retention of all seniority rights for Capital employes under our agreement with that corporation.

By operation of our agreement with Capital Airlines, which provides in Article 1(b) that "all provisions of this agreement shall be binding upon the successors and assigns of the company," and which the National Mediation Board in its Interpretation No. 93, Case No. A-6037, has found that "the language means just what it says and we so find," and by reason of the provisions of Section 3 of Appendix A—Labor Protective Provisions—In the matter of the *United-Capital Merger* case—Civil Aeronautics Board's Order No. E-16605—which provides that the seniority rights of Capital Airlines' employes shall be dealt with in an equitable manner, the seniority rights of the former Capital employes now in the employ of United, who occupied positions with Capital in Seniority Districts Nos. 1 and 2, mentioned above, and which extended to positions in occupations not now represented by the I.A.M. on United, should entitle them to vote in the determination of the representative for collective bargaining purposes for the employes

occupying positions to which their seniority is valid and not now represented by any other organization.

The former Capital employes occupying positions now represented by the I.A.M. on United are, in effect, in a furloughed status with regard to all positions to which their seniority was valid under our agreement with Capital and not now represented by the I.A.M. Since the former Capital employes in that status have a valid claim to the exercise of their seniority to some positions in the craft or class (as limited) designated in our request for certification by the Board as the collective bargaining representative on United, such employes have a valid right to cast a ballot to determine such representative. It is requested that the Board permit such employes to participate in the vote.

Very truly yours,

GEO. M. HARRISON,
Grand President.

Exhibit B

Copy

NATIONAL MEDIATION BOARD
Washington

August 30, 1962

Mr. Charles M. Mason,
Senior Vice President Personnel,
United Air Lines, Inc.,
P. O. Box 8800,
O'Hare International Airport,
Chicago 66, Illinois.

Mr. A. J. Hayes,
International President,
International Association of Machinists,
New Machinists Building,
1300 Connecticut Avenue, N. W.,
Washington, D. C.

Gentlemen:

We have an application from the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, to investigate a representation dispute under the provisions of Section 2, Ninth, of the Railway Labor Act among the following employes of the United Air Lines, Inc.

> Commonly known as clerical, office, stores (excluding stores employes represented as of August 24, 1962, by the International Association of Machinists), fleet (excluding fleet service employes represented as of August 24, 1962, by the International Association of Machinists) and passenger service employees.

A copy of Mr. Harrison's letter to the Board, dated August 27, 1962, setting forth additional information pertaining to this application is attached for each of you gentlemen.

Mr. Mason is requested to furnish total number of employees covered by this application, along with any statement he may care to make.

Since the IAM is the current representative for stores and fleet service employees, Mr. Hayes is requested to submit any statement he may care to make with respect to this application.

Very truly yours,

/s/ E. C. THOMPSON,
Executive Secretary.

cc: Mr. George M. Harrison.

Exhibit C

UNITED AIR LINES, INC.
1200 Algonquin Road, Elk Grove Township, Illinois

Mailing Address:
P. O. Box 8800,
Chicago 66, Ill.

Executive Offices

September 7, 1962.

Mr. E. C. Thompson,
National Mediation Board,
1230 Sixteenth Street, N. W.,
Washington 25, D. C.

Dear Sir:

We acknowledge receipt of your letter of August 30 in which you advise United Air Lines that the National Mediation Board has received an application from the Brotherhood of Railway and Steamship Clerks to investigate a representation dispute under the provisions of Section 2-Ninth of the Railway Labor Act among the following employees of the United Air Lines, Inc.:

> "Commonly known as clerical, office, stores (excluding stores employes represented as of August 24, 1962, by the International Association of Machinists), fleet (excluding fleet service employes represented as of August 24, 1962, by the International Association of Machinists) and passenger service employes."

Since the Brotherhood's application excludes certain employees represented as of August 24, 1962 by the International Association of Machinists, the application is in-

consistent with the National Mediation Board's determination of craft or class in Case No. R-1706 et al. The application, therefore, is for a group of employees smaller than the craft or class which the Board has found to exist in the airline industry.

As United has previously advised the Board on a number of occasions, it is our long established policy and practice to treat only with a labor organization certified by the National Mediation Board pursuant to the Railway Labor Act which requires certification of a duly authorized representative for an entire craft or class. The files of the National Mediation Board will show that United Air Lines voluntarily recognized the International Association of Machinists as the collective bargaining representative of ramp and stores employees in 1948. At the time of this voluntary recognition United supplied the Mediation Board the evidence upon which this recognition was based and the reasons why an exception was being made to its established policy. The National Mediation Board replied, reminding United and the International Association of Machinists that this voluntary recognition did not preclude a subsequent determination by the National Mediation Board of the proper craft or class to which the employees would belong.

It is United's position, therefore, that since the Brotherhood's application requests investigation of a representation dispute involving only a part of a group of employees which the Board has found to constitute a craft or class, it should be dismissed. In the event the Board does not see fit to dismiss the Brotherhood's application, the Board should then hold a public hearing to determine whether or not the proper craft or class is that expressed in prior determinations by the Board, or whether the proper craft or class is something other than that previously determined by the Board in these previous cases. Only in this manner can the processing of this application result in the certi-

fication to United Air Lines of a duly authorized representative of its employees with which United will be legally obligated to bargain. In making this reply, United does not at this time take any position as to the extent of the proper craft or class of its employees who may be involved in the Brotherhood's application.

In view of United's position as stated above, we will not at this time furnish the total number of employees or our position on the Brotherhood of Railway and Steamship Clerk's contention with respect to the eligibility to vote of employees formerly represented by it on Capital Airlines who are now represented by the International Association of Machinists on United Air Lines.

Since the Board's decision if it does not dismiss the Brotherhood application will vitally affect the existing representation of certain employees by the International Association of Machinists, we are sending a copy of this letter to Mr. Hayes for his information.

Sincerely,

CHARLES M. MASON,
Senior Vice President,
Personnel.

cc: Mr. George M. Harrison,
Mr. A. J. Hayes.

Exhibit D

UNITED AIR LINES

November 2, 1962

Mr. E. C. Thompson,
Executive Secretary,
National Mediation Board,
1230 Sixteenth Street, N. W.,
Washington 25, D. C.

Dear Mr. Thompson:

We acknowledge receipt of a copy of your letter of October 8, 1962 to Mr. George M. Harrison attached to which were two letters from Mr. Harrison to you, dated August 29 and October 5, 1962, respectively.

Mr. Harrison's letter to you, dated October 5, 1962, amends the application of the Brotherhood of Railway and Steamship Clerks to investigate a representation dispute under the provisions of Section 2, Ninth, of the Railway Labor Act so that the craft or class for which the services of the Board are requested is now described as follows:

"Commonly known as clerical, office, stores, fleet and passenger service employes."

In your letter dated October 8, 1962 to Mr. Harrison, you request United Air Lines to furnish the Board with the number of employees in the craft or class described above. The records of United Air Lines indicate that there is a total of 12,451 employees as of October 15, 1962 in such craft as we understand it. Of these 12,451 employees, 3,068 employees are presently represented by the International Association of Machinists and are covered under the terms and provisions of the Ramp and Stores Agreement be-

tween United Air Lines, Inc. and the International Association of Machinists.

We wish to advise the Board that the above figure of 12,451 does not include any employees performing janitorial or cleaning work.

Since the 1949 Mechanics' Agreement between United Air Lines, Inc. and the International Association of Machinists, all janitorial and cleaning work has been recognized as coming within the jurisdiction of the International Association of Machinists and as covered by the Mechanics' Agreement. All janitorial work has been included since the 1949 Mechanics' Agreement in the work of the classification of Utility Employees, which employees had previously been included by the Board in the craft or class of Mechanics on United Air Lines. (Although one of the specific job titles assigned to employees in the Utility Employee classification is Janitor, any employee in the Utility Employee classification may perform janitorial work.) The classification of Cleaning Woman has also been included in each Mechanics' Agreement since the 1949 Mechanics' Agreement.

There are 339 employees classified as Lead Janitors, Janitors or Cleaning Woman as of October 15, 1962.

Very truly yours,

CHARLES M. MASON,
Senior Vice President,
Personnel.

cc: Mr. A. J. Hayes,
Mr. George M. Harrison.

Exhibit E

INTERNATIONAL ASSOCIATION OF MACHINISTS
1300 Connecticut Avenue
Washington 6, D. C.

Office of the
International President.

49-United,

September 11, 1962.

Subj: United Air Lines, Inc.
Application Representation
Dispute filed by BRC.

Mr. E. C. Thompson,
Executive Secretary,
National Mediation Board,
Washington 25, D. C.

Dear Mr. Thompson:

This will acknowledge the receipt of your letter dated August 30, 1962 wherein you advise of the application filed by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, to investigate a representation dispute involving certain employees of United Air Lines, Inc. You also enclosed a copy of Grand President George M. Harrison's letter dated August 27th setting forth the position of the BRC with respect to this application.

In reviewing this entire matter, including the information contained in Mr. Harrison's letter of August 27th, it is our considered opinion that the craft or class of em-

ployees as requested by the BRC does not conform to the findings of your Board, particularly with reference to the craft or class determination as set forth in Case R-1706, et al.

Respectfully yours,

/s/ A. J. HAYES,
A. J. Hayes,
International President.

H/FH/ac
cc: Reeves.

Exhibit F

Copy

Grand Lodge

Brotherhood of Railway and Steamship Clerks,
Freight Handlers, Express and Station Employes,
Brotherhood of Railway Clerks Building,
Cincinnati 2, Ohio.

Geo. M. Harrison,
Grand President.

File 230-449-7.

Subject: Organization—
United Air Lines, Inc.

August 29, 1962.

Mr. E. C. Thompson, Exec. Secy. (2),
National Mediation Board,
Washington 25, D. C.

Dear Sir:

I wish to acknowledge receipt of your letter of August 27 in response to ours of August 24, 1962, attaching an application for the services of your Board in a representation dispute on United Air Lines, Inc., covering employes "Commonly known as clerical, office, stores (excluding stores employes represented as of August 24, 1962, by the International Association of Machinists), fleet (excluding fleet service employes represented as of August 24, 1962, by the International Association of Machinists) and passenger service employes."

You observed that from the craft description, stores employes represented as of August 24, 1962, by the Interna-

tional Association of Machinists and fleet service employes represented by the same Association as of the same date are excluded from the application. You asked to be advised as to the significance of the date mentioned and whether it is the position of our Organization that employes hired in the excluded categories after August 24, 1962, would be covered by the application.

The meaning of our exclusion was simply that we did not intend to include in our application the incumbent of any occupation or position represented by the International Association of Machinists on August 24, 1962, but we did intend to include the incumbents of all occupations in those categories if they were represented by the International Association of Machinists by reason of an agreement with the United Air Lines, Inc., entered into at a date subsequent to August 24, 1962. Any employe hired by United Air Lines subsequent to August 24, 1962 in the excluded categories, namely, those positions for which the International Association of Machinists was the collective bargaining agent as of August 24, 1962, is to be excluded from the representation dispute.

In other words, and to state it simply, we wish to make it clear that our request for the services of the Board is not intended to include the incumbent of any position for which the International Association of Machinists was the collective bargaining agent on August 24, 1962, or the persons occupying those positions subsequent thereto.

I hope I have made it clear that we are not contending in our application to the Board for the representation rights of the occupant of any position for which the International Association of Machinists had representation rights on August 24, 1962.

Very truly yours,

/s/ GEORGE M. HARRISON,

Grand President.

Exhibit G

Copy

Grand Lodge

Brotherhood of Railway and Steamship Clerks,
Freight Handlers, Express and Station Employes,
Brotherhood of Railway Clerks Building,
Cincinnati 2, Ohio.

Geo. M. Harrison
Grand President.

File 230-449-7.

Subject: Organization—
United Air Lines, Inc.

October 5, 1962.

Mr. E. C. Thompson, Exec. Secy. (2),
National Mediation Board,
Washington 25, D. C.

Dear Sir:

This will acknowledge receipt of your letter of September 13 with regard to our application dated August 24, 1962, for investigation of a representation dispute among certain employees of United Air Lines, Inc. you attached to your letter. a copy of one addressed to the Board, dated September 11, 1962 by Mr. A. J. Hayes, International President, International Association of Machinists, commenting upon our request. You were correct in your statement that Mr. Charles M. Mason, Senior Vice President, Personnel, United Air Lines, had furnished me a copy of his letter of September 7, 1962, addressed to the Board, commenting upon our request for the Board's services. It should be

noted that a copy of Mr. Mason's letter was also furnished to Mr. Hayes.

Under the Railway Labor Act, an employer is not entitled to participate in a representation dispute, and therefore, the Board may not take cognizance of Mr. Mason's comment concerning the appropriateness of the craft or class as defined in my request for the Board's services dated August 24, 1962.

It is noted that Mr. Hayes is collaborating with the management of United Air Lines by also raising the question as to the appropriateness of the craft or class as defined in my letter to the Board dated August 24, 1962. In the last paragraph of Mr. Hayes' letter, he says: "it is our considered opinion that the craft or class of employees as requested by the BRC does not conform to the findings of your Board, particularly with reference to the craft or class determination as set forth in Case R-1706, et al."

Mr. Hayes indicates that the Board furnished him copies of my letters of August 24, 1962, and August 27, 1962, addressed to the Board. It is presumed that since the Board furnished him copies of these two letters, that it also furnished Mr. Hayes a copy of my letter of August 29, 1962. In each of those three letters I made it clear that it was not the intent of our Organization to include in the craft or class description for which we had requested the Board's services in the investigation of the representation dispute any employee of United Air Lines, Inc., subject to an agreement in existence prior to August 24, 1962, the date on which I requested the services of the Board.

The only inference to be drawn from Mr. Hayes' statement, as quoted above from his letter to the Board dated September 11, is that he is of the opinion that our request for the Board's services in this dispute should have included as well the employees in occupations covered by the agreements between the International Association of Ma-

chinists and United Air Lines. I am, therefore, hereby advising the Board of my desire to amend the statement of the craft or class as set out in my request for the Board's services under date of August 24. Please substitute for the description of the craft or class for which the services of the Board are requested, the following:

> Commonly known as clerical, office, stores, fleet and passenger service employees.

The National Mediation Board is urged to process our request of August 24, 1962. as amended herein without further delay.

Very truly yours,

/s/ GEO. M. HARRISON,
Grand President.

Exhibit H

NATIONAL MEDIATION BOARD
Washington

October 8, 1962

Mr. George M. Harrison, Grand President,
Brotherhood of Railway and Steamship Clerks,
1015 Vine Street,
Cincinnati, Ohio.

Dear Mr. Harrison:

Receipt is acknowledged of your letter of October 5, 1962 on the subject of "Organization—United Air Lines File 230-449-7."

We are sending herewith to Mr. C. M. Mason, Senior Vice President of United Air Lines, Inc. and to Mr. A. J. Hayes, President of the International Association of Machinists copy of your letter of October 5, 1962 for their full infor-

mation. Mr. Mason is requested to furnish the Board with the number of employees in the craft or class described in your letter. Mr. Hayes is requested to furnish any comments he may care to make on the subject. We did not furnish either the carrier or the I. A. M. with copy of your August 24, 1962 letter since it contained the number of authorization cards submitted with your application.

We are also sending to Messrs. Mason and Hayes copy of your letter of August 29, 1962 which has not heretofore been sent them.

Upon receipt of the information requested from the carrier we will advise you further on the subject.

Very truly yours,

/s/E. C. THOMPSON,
E. C. Thompson,
Executive Secretary.

4-etm.

cc-to: C. M. Mason,
A. J. Hayes.

Exhibit I

Copy

International Association of Machinists,
1300 Connecticut Avenue,
Washington 6, D. C.

Office of the
International President.

49-United,

October 23, 1962.

Subj: United Air Lines, Inc.
Application Representation
Dispute filed by BRC.

Mr. E. C. Thompson,
Executive Secretary,
National Mediation Board,
Washington 25, D. C.

Dear Mr. Thompson:

This will acknowledge receipt of your letter of October 8, 1962 accompanied by copies of letters addressed to your Board dated August 29 and October 5, 1962 and signed by Mr. George M. Harrison, Grand President of the Brotherhood of Railway & Steamship Clerks, both of which deal specifically with the representation application filed with your Board by the BRC, involving certain groups of employees on United Air Lines, Inc.

At the outset, we categorically deny the allegation made by Mr. Harrison in the third paragraph of his letter of October 5, 1962, wherein he alleges that our Organization is collaborating with the management of United Air Lines. The statement within itself is not worthy of further comment.

The position of our Organization with respect to this representation application, as set forth in our letter of September 11, 1962, is valid and consistent with the past practices of your Board. In our opinion the application filed by the BRC at that time was designed to divide or split a craft or class. This within itself is a position that the BRC has vigorously opposed, notwithstanding the facts pertaining thereto in several instances over a long period of years.

The statement contained in the fifth paragraph of Mr. Harrison's letter dated October 5th, wherein he attempts to express the opinion of our Organization with respect to their application is, again, an opinion of Mr. Harrison and does not direct itself to any opinion expressed by this Organization. We are particularly concerned over the fact that Mr. Harrison now apparently is requesting your Board to amend their original petition to include all employees of United Air Lines "Commonly known as clerical, office, stores, fleet and passenger service employees." If this be the case, we then must call Mr. Harrison's attention to the fact that our Organization has no other choice than to consider this action on the part of the BRC as a raid against the IAM.

All employees of United Air Lines in the categories of stores and fleet service employees, including those who were formerly Capital Airlines employees, are now represented by the IAM and are covered by an agreement with United Air Lines, Inc.

If Mr. Harrison pursues the course as outlined hereinabove, then our Organization will have no choice other than to proceed with formal action in accordance with the procedure of the AFL-CIO Constitution.

Respectfully yours,

/s/ A. J. HAYES,

A. J. Hayes,

International President.

cc: G. M. Harrison,
J. L. Reeves.

Exhibit J

GRAND LODGE

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
Freight Handlers, Express and Station Employes
Brotherhood of Railway Clerks Building
Cincinnati 2, Ohio

Geo. M. Harrison
Grand President

File 230-449-2

Subject: Organization—
United Air Lines, Inc.

October 26, 1962

Mr. E. C. Thompson, Exec. Secy. (2)
National Mediation Board
Washington 25, D. C.

Dear Sir:

Please be referred to the letter of October 23, 1962, addressed to the National Mediation Board by Mr. A. J. Hayes, International President of the International Association of Machinists, a copy of which he furnished to me.

Mr. Hayes' letter concerned the application filed by our Organization under date of August 24, 1962, requesting that the Board investigate a representation dispute among certain employes of United Air Lines, Inc. In that application, as well as my letter of August 27 and my subsequent letter of August 29, both of which were addressed to the Board, I made it clear that it was not the intent of our Organization to include in the representation dispute any

employe of United Air Lines, Inc., who was presently subject to an agreement between the International Association of Machinists and that Company.

Mr. Hayes, by the position he has taken, has left us no alternative but to include in the representation dispute all employes of United Air Lines in the entire craft or class. If in the light of these developments Mr. Hayes chooses to proceed against our Organization under the Constitution of the AFL-CIO, that is his privilege and, under the circumstances, most certainly is of no concern to the National Mediation Board.

Under date of October 8, 1962, you acknowledged receipt of my letter of October 5 amending my request for the services of the Board in this representation dispute to include the entire craft or class. You furnished a copy of your letter of October 8 to Mr. Charles M. Mason, Senior Vice President, Personnel, United Air Lines, Inc., requesting that he furnish the Board with the number of employes in the craft or class. I am now in receipt of a copy of your letter of October 24 addressed jointly to Mr. Mason and Mr. Hayes, tracing Mr. Mason for the information requested in your letter of October 8, 1962.

May I again request the Board to take action without further delay to resolve the dispute with regard to the representation of the employees of United Air Lines in accordance with my application of August 24, 1962, as amended by my letter of October 5, 1962.

Very truly yours,

/s/ GEO. M. HARRISON,
Grand President.

Exhibit K

UNITED AIR LINES
1200 Algonquin Road,
Elk Grove Township, Illinois
Mailing Address: P. O. Box 8800, Chicago 66, Illinois

Telephone 625-1400

January 11, 1963

Executive Offices
Mr. E. C. Thompson,
Executive Secretary,
National Mediation Board,
1230 Sixteenth Street, N. W.,
Washington 25, D. C.

Re: NMB Case No. R-3590

Dear Mr. Thompson:

Mediator Klatte has requested certain information from United for the purpose of holding an election in reference case. We believe his request is premature in the absence of a ruling from the Mediation Board on the request of United made September 7, 1962 that a public hearing be held to establish the proper crafts and classes on United. We hereby renew our request that such a public hearing be held and set forth herein at some length the reasons necessitating a hearing.

We wish to point out to the Board that the group of employees covered in the representation application filed in the above case does not coincide, either in its original or amended form, with any currently applicable craft or class determination. Further, there are distinguishing features between the members of the heterogeneous group of employees involved in this application which the Board has not had the opportunity to fully consider in any prior pro-

ceedings. At a public hearing, the Board will learn of the wide variances in the training, skills and responsibilities of the employees, of the absence of cross-training and cross-utilization between them, and of the absence of a community of interest, for example, between the highly skilled office employees and the janitorial and cleaning employees. The lack of unanimity in the air transport industry in general and on United in particular with reference to the organization of operations, the selection, training, use, representation and lack of permanency in respect to these factors in this dynamic and rapidly changing industry can and should be considered by the Board.

In 1946, in R-1706, the Mediation Board was asked to establish for the first time on an airline a craft or class grouping of employees ranging from what the Board referred to as janitors and laborers to the highest type of technical office employees. The Board attempted in that case to establish a mold to apply to all airlines in the future. Since most of the employees in this heterogeneous grouping were unorganized at the time in the air transport industry, the Board was forced to treat with the important subject of craft or class in somewhat of a vacuum with the "hope" that its prospective determination would provide a basis for stable labor relations in the *future* on *airlines* only because such a craft had been found to provide such a basis in the *past* on *railroads*. Although the Board did avoid a multiplicity of crafts or classes by its determination in R-1706, the Board simply did not have knowledge at the time of its decision (January 31, 1947) of the changes that would and did later occur in the air transport industry.

The BRC contended during the public hearing in R-1706 that because the Railway Labor Act was amended to cover airlines, the same craft or class treatment on rail lines should be followed by the Board on airlines. Although this

specific contention was not accepted by the Board, the Board nevertheless found a craft or class of airline employees that was the counterpart of the railroad craft or class of clerical, office, station and storehouse employees. The IAM, on the other hand, requested a separate craft or class of ramp service and stores employees. This view was rejected by the Board as was the IAM's later request for a reconsideration of the Board's findings.

Although the IAM's request for a reconsideration of the R-1706 findings was denied by the Board in 1947, the Board then stated that its denial did *not* prevent a re-examination of craft or class as applied to these categories of employees in *any* future airline representation disputes. This position was taken in 1947, as the Board later explained in R-2783, in "recognition of the fact that the airline industry was still in a state of development," and further, "that the clerical and related employees on many of the major air carriers were then unrepresented." Thus, the Board recognizes that the lack of representation of the bulk of these employees on many of the major air carriers is a significant factor to be taken into account in representation questions.

At the invitation of the Board, United was present at the public hearing in R-1706 and United's views on craft or class were received by the Board. Based upon its limited experience and in the interests of avoiding an unknown and possibly undesirable multiplicity of crafts or classes, United had recommended adoption of a craft or class substantially the same as the one adopted by the Board.

As early as September 20, 1949, however, United Air Lines advised the National Mediation Board that developments in organization after R-1706 had led United to believe it may have been in error in the position it took before the Mediation Board. United advised the Board that the organizational development by 1949 among the employees

on United after R-1706 and changes in United's own operational organization were such that the Board's determination in R-1706 had become impractical both from the employees' point of view and the carrier's.

In 1951, in a matter concerning the proper craft or class grouping of equipment service men, stock clerks or janitors of Northwest Airlines in R-2357, the National Mediation Board accepted the Statement of United Air Lines. In its Statement, United advised the Board that United had definitely concluded, in light of its experience, that the Board's determination in R-1706 did not provide for a proper craft or class for the air transport industry.

In R-2357, decided February 22, 1953, the Board stated that arguments advanced for reconsideration of the proper groupings of the various occupational classifications of employees which may comprise the craft or class of clerical, office, stores, fleet and passenger service employees impressed the Board as having considerable merit. The Board announced in R-2357 that in view of the lapse of five years after R-1706 and because of the "expansion and growth of the airline industry" as well as the "development of representation of airline employees," *the Board was then of the opinion that upon proper application, it would be advisable to re-examine the determination in R-1706, with a view of making such modifications as might be found to be justified at the time in question.*

In R-2783, decided February 16, 1954, in a case concerning a request by the IAM to represent stores employees of Northwest Airlines separately from the broad clerical group included in R-1706, the Board did examine its R-1706 findings. While it did not re-examine the entire craft or class, the Board concluded that stores employees are a separate craft or class for the purposes of the Railway Labor Act.

In C-2252 and C-2389, decided November 9, 1956, in com-

panion cases relating to the request of the IAM to separate stores employees of Trans-Texas Airways and North Central Airlines from the existing clerical groupings, the Board again re-examined R-1706 findings with reference to stores employees. In so doing, the Board noted that by that time (1956) the representation of the entire clerical craft as outlined in R-1706 showed that such craft was *not* represented as a single unit on any air carriers except six.

The Board went on to say that its records showed that stock and stores employees were organized and covered by collective bargaining agreements on 24 air carriers, independently of the craft as designated in R-1706. United was included by the Board as one of the Board's 24 examples where stock and stores employees were represented as a separate unit by the same organization representing airline mechanics on those carriers. On the basis of evidence presented at the *hearing* and the development of representation among stock and stores employees, the Board concluded that the general purpose of the Railway Labor Act would be more readily achieved and the general duties as specified in Section 2 of the Act would be more readily accomplished by a determination that stock and stores employees are considered separate crafts or classes of employees. The Board's conclusion was reached only after a public hearing.

Inasmuch as United knows of no findings of the Mediation Board subsequent to Cases C-2252 and C-2389 re-establishing the stores employees as a part of the clerical and related group covered by R-1706, it can only be considered now that the R-1706 findings are no longer controlling. It should be noted that the amended application of the BRC in the current case is based on the now obsolete R-1706 findings.

The importance that the Board's craft or class determinations have in settling of disputes and the promotion of

stable labor relations has been clearly recognized by the National Mediation Board. As a necessary corollary, the Board's determination may well disrupt instead of promote stable labor relations and encourage rather than settle disputes among employees. The Board's class or craft determinations have, of course, a demonstrable impact upon the organizational structure and operating efficiency of an air carrier.

The Board itself has recognized that it therefore should review and even revise its class or craft determinations with respect to airline employees after a public hearing, and has done so. In R-1447, for example, the Board altered the craft or class of airline mechanics. In R-2357, the Board concluded that R-1706 should be re-examined and in R-2783, C-2252 and C-2389, it concluded that stores employees are no longer properly grouped with the various other components in what had been a craft or class of clerical, office, stores, fleet and passenger service employees as determined in R-1706. Also, and as recently as 1961, the Board, in C-2946, made a drastic change in the grouping of flight deck crew members of United Air Lines.

As a result of the findings of the National Mediation Board Committee in C-2946, decided January 17, 1961, in the matter of representation of employees of the *United Air Lines, Incorporated—Flight Deck Crew Members,* the Board conducted an election on the basis of a single craft or class in face of a long history of collective bargaining of two separate crafts or classes which had existed not only on United but on a majority of the major air carriers. C-2946 is significant in several respects. In the first place, the Committee found, among other things, that—

> "The airline industry, as distinguished from the railroads, is still in the formative stage and in a period of expansion, with strong prospects of further technological change. The difference between the railroads and

the airline industries affects the application of craft or class principles and criteria with the result that the determination made herein may not be considered, as such, applicable to the railroads."

Further, as pointed out in C-2946, "When governmental participation in the determination of craft and class issues occurred in the railway and air transportation industries, the two branches were in entirely different stages of maturity" and that there is no "high degree of crystallization in craft and class lines" in the "comparatively new air carrier industry" that the years have brought on the railroads. The teaching of C-2946 is that the Board is not necessarily bound by past craft or class groupings; on the contrary, the Board will take a fresh look at crafts or classes in the air transport industry.

Congress has imposed upon United Air Lines, as a scheduled air carrier, the obligation to follow the declaration of national policy to provide " economical and efficient service by air carriers at reasonable charges." United Airlines is also under the statutory command of the Railway Labor Act to treat "in a proper case" with the representative of its employees as certified by the Board for a craft or class determined by the Board. Because of the impact that the grouping of employees into crafts or classes can have upon an air carrier's organization and operation, it is necessary that the Board establish a craft or class or revise one only after the fullest hearing and after obtaining the views of all concerned—including the carrier. The carrier is obviously in the best position to furnish evidence to the Board on the effect that craft or class groupings may have on interruptions of its service to the public. For example, the Committee appointed by the Board in C-2946 requested information from United before making the important craft or class determination which had such a dramatic effect upon the

entire air transport industry that the President of the United States and the Secretary of Labor intervened.

The inappropriateness of the Board's R-1706 findings of 1947 have been apparent for some time not only to United but to others, as pointed out above. The Board itself, as noted, recognized that the R-1706 findings are no longer appropriate. The fact that 16 years have elapsed since the R-1706 findings and there still is no representation of the clerical and related employees on many of the major air carriers renders R-1706 even more obsolete. United has enlarged to where it is the largest domestic scheduled air carrier. Thus, any craft or class determination made in 1947 for another airline on the prospect of future employee representation, which has never occurred, cannot properly be applied 16 years later to the organizational and operational structure of United. A determination of what craft or class groupings are now appropriate should only be made after a public hearing.

In summary, United Air Lines believes a public hearing is not only appropriate, but necessary to serve the public interest for the following reasons:

> The Board's determination in R-1706—issued sixteen years ago—was not based upon actual airline experience and history, but was carried over from the railroads. Whether it would become suitable for the airlines had to be left for future developments.
>
> Experience in the airline industry since 1947 has demonstrated that the Board's determination in R-1706 has not been suitable for the airlines, as witnessed by the fact that the Board itself has reexamined and departed from its R-1706 determination in various subsequent cases (R-2783, C-2389, C-2487), and the organization of employees on major air carriers has not conformed to the R-1706 findings.
>
> United's own experience over the sixteen-year period which has elapsed since R-1706, during which time there has been a substantial growth and evolution in the

Company, clearly establish the inappropriateness of R-1706 to present day conditions.

The carrier's ability to operate efficiently and to have stability in labor relations would be severely hampered by imposition of the now obsolete determination on United since R-1706 lumps together heterogeneous groups of skilled and unskilled employees in a manner wholly inappropriate to the Company's present organizational structure.

The Board, as noted above, has committed itself to take a fresh look in a public hearing at the appropriateness of a craft or class when appropriateness is questioned in light of changed conditions.

Based upon United's study and experience, as well as observations in the industry, United believes that the groups of employees under discussion probably logically separate into three large crafts or classes. At the Board's hearing, United will be prepared to supply the Board with full historical and present facts upon which the Board can judge the propriety of what is proper under all the facts.

Sincerely yours,

/s/ C. M. Mason,
Senior Vice President-Personnel.

cc: Mr. George Harrison
Mr. A. J. Hayes
Mediator Klatte

Exhibit L

NATIONAL MEDIATION BOARD
Washington

January 17, 1963

NMB Case No. R-3590

Mr. Charles M. Mason, Sr. Vice President
United Air Lines, Incorporated
P. O. Box 8800
Chicago 66, Illinois

Dear Mr. Mason:

Acknowledgement is made of your letter of January 11, 1963 in re NMB Case No. R-3590. You state you believe the request made by Mediator Klatte for certain information from United Air Lines, for the purpose of holding an election in this case, is premature in the absence of a ruling from the National Mediation Board on the request of United Air Lines dated September 7, 1962 that a public hearing be held to establish the proper crafts or classes on United Air Lines.

Reference to your letter of September 7, 1962 shows the specific request you made was as follows:

> "It is United's position, therefore, that since the Brotherhood's application requests investigation of a representation dispute involving only a part of a group of employees which the Board has found to constitute a craft or class, it should be dismissed. In the event the Board does not see fit to dismiss the Brotherhood's application, the Board should then hold a public hearing to determine whether or not the proper craft or class is that expressed in prior determinations by the Board, or whether the proper craft or class is something other than that previously determined by the Board in these previous cases."

The application filed by the Brotherhood of Railway & Steamship Clerks on August 24, 1962 was not dismissed, and was subsequently amended to cover the craft or class commonly known as Clerical, Office, Stores, Fleet and Passenger Service Employes. You were so advised by copy of Mr. Harrison's letter of October 5, 1962 transmitted with copy of our letter to Mr. Harrison dated October 8, 1962.

In our letter of October 24, 1962, addressed to you and President Hayes of the International Association of Machinists, we inquired whether you were in a position to furnish the number of employes in this craft or class as requested in the last paragraph of our letter of October 8, 1962. On November 2, 1962 you replied and stated "the records of United Air Lines indicate there is a total of 12,451 employes as of October 15, 1962 in such craft as we understand it." You further stated this figure did not include 339 employes classified as Lead Janitors, Janitors or Cleaning Women as of October 15, 1962. Your letter of November 2, 1962 indicated a clear understanding of what is meant by the craft or class commonly known as Clerical, Office, Stores, Fleet and Passenger Service Employees as referred to in the Board's determination issued in NMB Case No. R-1706, et al.

The various comments made in the remainder of your letter of January 11, 1963 have been given careful consideration by the Board. The Board wishes to call your attention, first, to the fact that the carrier is not a party to this representation dispute. Secondly, no request for a review of the craft or class established by the Board's determination in Case No. R-1706, et al has been received from either organization party to NMB Case No. R-3590. The request contained in your letter of January 11, 1963 is not timely made, since the Board, on December 19, 1962, found that a representation dispute existed among the employees in this craft or class and has authorized an election.

For the above reasons, the Board must deny your request of January 11, 1963 for a public hearing on the subject of a review of the determination made in Case No. R-1706, et al.

It is, therefore, requested that you furnish promptly to Mediator Klatte the necessary information regarding the employees of United Air Lines, Inc. in the craft or class at issue, so he may proceed with plans to hold an election among these employees. Your cooperation in furnishing this information promptly to Mediator Klatte will be appreciated.

By direction of the National Mediation Board.

/s/ E. C. THOMPSON,
Executive Secretary.

cc to: G. M. Harrison
A. J. Hayes
W. F. J. Klatte

Exhibit M

UNITED AIR LINES

1200 Algonquin Road, Elk Grove Township, Illinois
Mailing Address: P. O. Box 8800, Chicago 66, Illinois
Telephone 625-1400
Executive Offices.

January 25, 1963.

Mr. Leverett Edwards,
Chairman
National Mediation Board
Washington 25, D. C.

Dear Mr. Edwards:

Acknowledgment is made of the Board's reply dated January 17, 1963 to United's letter of January 11, 1963. The Board in its reply denies United's request that the

Board hold a public hearing to establish the proper crafts and classes on United.

The purpose of this letter is to protest the Board's refusal and to ask that the Board reconsider United's request. In support of our request for reconsideration, I wish to supplement my letter of January 11, 1963.

We in United are astonished that the Board would make a decision vitally affecting 12,700 employees and which will have a long lasting and adverse effect upon the operating efficiency and economy of United without obtaining the views of everyone concerned. The Board's denial of United's request indicates that the Board is somehow prohibited from obtaining or considering United's views on the craft or class question on the ground that United is not a party to this representation dispute. This is indeed strange since on a number of previous occasions the Board has specifically invited United to express its views at public hearings on the question of what constitutes a proper craft or class. Indeed, both of the contesting labor organizations have at one time or another in the past complimented United for its expression of such views and have urged United to express them at subsequent public hearings.

In stating that the carrier is not a party to this representation dispute the Board's reply attributes to United a position it has never sought and does not now seek. United is fully aware that it is not a party to any controversy over the choice of representatives by the employees; indeed, United has no desire to be such a party and recognizes the legal and proper right of the employees to choose their own representative, if they wish one. United submits, however, that it has a legitimate interest in the scope of a craft or class. In other words, the *only* issue in which United asserts a right to be heard concerns the *scope* of the craft or class—not the identity of the representative, if any, of the employees of such craft or class in an election.

The Board's failure to recognize United's legitimate interest in the scope of a craft or class will interfere with the efficient conduct of United's business. The refusal by an administrative agency of the Federal government to afford United an opportunity to be heard at a public hearing in a matter which will so seriously affect United's ability to conduct its business is in fact a denial of due process.

Further, the Board, on its own initiative and in the exercise of its own discretion, should hold the requested public hearing. Any rule of the Board that a carrier does not have a status which entitles it to be heard on the breadth of a class or craft is as archaic as the railroad craft or class in which an election is proposed. The Board has a responsibility under the Railway Labor Act to work for the establishment of stable labor relations in the airline industry. As the Board well knows, a craft or class determination can have a serious and disruptive effect on interstate transportation. This was clearly shown when President Kennedy, on the day of his inauguration, had to assign the Secretary of Labor to mediate airline strikes resulting from a craft or class determination which was arrived at after lengthy public hearings stretching over many months. It cannot be said that the purposes of the Act are better served when an inappropriate craft or class determination is imposed upon over 12,000 employees without any public hearing whatsoever.

You seem to imply in your letter that United's request for a public hearing is tardy and should have been repeated at the time the Brotherhood of Railway Clerks amended its representation application. United had no way of knowing at the time the Brotherhood amended its application that an election would in fact be held. This was not known until Mediator Klatte had checked authorization cards and on approximately December 19, 1962, advised United that the Board had authorized an election. Prior to that date, we

could see no useful purpose to be served in pressing for a public hearing on the subject of how employees should be grouped for voting purposes in an election that might never be held.

You further point out that United had a clear understanding of what is meant by the clerical, office, stores, fleet and passenger service employees craft or class when, on November 2, 1962, we advised you of the total number of United employees in that craft or class. We do not understand the significance of this statement. The fact that United did advise you of the total number of employees in the group described as the craft or class did not, of course, imply that United considered that the grouping was a proper one. Our request for a public hearing was not for the purpose of being advised by the Board where the boundaries of that craft or class lie. Our request was based upon the firm belief that the Board should review its determination of craft or class in R-1706, et al, and determine, in light of the lapse of 15 years, and the other factors set out in our letter of January 11, whether the R-1706 determination was still a proper grouping.

Finally, the imposition by the Board of an inappropriate railroad craft or class upon 12,700 employees of this dynamic and changing air transportation industry is illogical. The "clerical, office, station, and store house employees craft or class" grew up out of the historical development of the railroad industry. To say that a craft or class springing from the history of the then static and now declining railroad industry should be forcibly imposed on the airline industry, which has an entirely different history and is still growing, is illogical and improper. If the Board restricts air carriers to railroad rigidity, United will not be able to discharge fully the obligation imposed upon it by Congress through the Federal Aviation Act to provide efficient and economical service at reasonable charges to the

public. In fact, my personal observations of the operations and organization of Capital Air Lines before Capital had to be merged into United or face bankruptcy convinced me that part of Capital's difficulties resulted from the Board's action in 1947 in forcing a vast and heterogeneous group of employees into a single craft or class because that craft or class had been satisfactory on railroads in the past and the Board "hoped" it would be in the future on air lines.

For these reasons, we strongly urge the Board to reconsider its denial of United's request for a public hearing.

Sincerely yours,

C. M. MASON,
Senior Vice President—Personnel.

cc: G. M. Harrison
A. J. Hayes
W. F. Klatte

Exhibit N

NATIONAL MEDIATION BOARD
Washington

February 4, 1963

NMB Case No. R-3590

Mr. C. L. Mason, Sr. Vice President,
United Air Lines, Incorporated,
P. O. Box 8800,
Chicago 66, Illinois.

Dear Mr. Mason:

Acknowledgement is made of your letter of January 25, 1963, addressed to Chairman Edwards of this Board, protesting the Board's refusal to hold a public hearing on the question of craft or class in NMB Case No. R-3590, and asking that the Board reconsider United's request.

The Board, in executive session on January 31, 1963, gave very careful consideration to the various statements made in your January 25th letter. As you are aware, the two organizations which are parties to this dispute are in agreement that the craft or class of Clerical, Office, Stores, Fleet and passenger Service employees established by the Board's findings in NMB Case No. R-1706, et al. in the determination issued January 31, 1947, is the proper and appropriate grouping of these employees for the purposes of an election under Case No. R-3590.

The Board has received a number of letters and telegrams purporting to be from employees of United in this craft or class, protesting against a vote embracing the entire craft or class, and in some instances, asking that the Board include a space on the ballot for a vote for "no representation". A statement of the Board's position on these two questions has been prepared, dated January 25, 1963, copies attached. A large number of the communications referred to appear to have been inspired by your circular letter of January 14, 1963 addressed to all United Employees eligible to vote in the election under Case No. R-3590. The total number of such communications, however, represents only a small minority of the approximately 13,000 employees in the overall craft or class which you have reported. The Board is not in position to recognize these requests as justifying a hearing on craft or class in Case No. R-3590.

Your remarks concerning the carrier's interests in a craft or class determination have been given full consideration. Over the years, since the creation of the Board 1934, hundreds of determinations of craft or class have been made governing carrier employees in both the railroad and airline industries. Accommodations to the crafts or classes found appropriate by the Board have been made by the carriers concerned, when necessary, and with practically no protest.

Under all the circumstances existing in this case, the Board can see no justification to open the class or craft question on its own motion. Your request for reconsideration of the Board's decision contained in our letter of January 17, 1963 is accordingly denied.

Mediators Klatte and Pierce, who are assigned to the handling of this case, report that to date the carrier has not furnished them a list of the employees involved in this dispute. The record of this case shows that requests for this list have been made on the following dates:

December 19, 1962 by Mediator Klatte verbally to Mr. Berthoud and Mr. Hill.

January 14, 1963 by Mediator Klatte to Mr. Berthoud.

January 17, 1963 in the Board's letter to you.

January 21, 1963 by Mediator Klatte to Mr. Berthoud.

January 28, 1963 by Mediator Klatte to Mr. Berthoud.

Your attention is directed to the last sentence of Section 2, Ninth of the Railway Labor Act, reading as follows:

"The Board shall have access to and have power to make copies of the books and records of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph."

You are hereby requested to furnish the list of employees involved in this dispute, in the form requested by Mediator Klatte on December 19, 1962, and corrected to January 14, 1963 without further delay. Your prompt advice as to when this list may be expected will be appreciated.

By direction of the National Mediation Board.

E. C. THOMPSON,
Executive Secretary.

cc to: G. M. Harrison,
A. J. Hayes,
Wm. F. J. Klatte.

Exhibit O

UNITED AIR LINES

1200 Algonquin Road, Elk Grove Township, Illinois
Mailing Address: P. O. Box 8800, Chicago 66, Illinois

Telephone 625-1400
Executive Offices

January 18, 1963

Mr. Francis J. O'Neill,
Chairman,
National Mediation Board,
Washington 25, D. C.

Dear Mr. O'Neill:

Mediator Klatte has asked whether United Air Lines will allow the National Mediation Board to hold a ballot box election on United Air Lines property at points where fifty (50) or more of United's employees involved in Case R-3590 are located.

United Air Lines is willing to allow a ballot box election on Company property provided the ballot follows the form used by the National Labor Relations Board in similar union representation elections held under the National Labor Relations Act. In other words, the ballot would have a space for the employee to vote *against* representation as well as space for the employee to vote *for* representation by the Brotherhood of Railway Clerks or the International Association of Machinists. The ballot also could provide space to vote for "any other organization or individual" or not provide such a space, as the Board might deem proper in the light of the revision of the ballot. We would also expect that the customary rules would be established and followed to insure that the election is conducted

without any undue influence upon the employees eligible to vote. If the balloting is conducted in this manner, United also would be willing to have the employees vote during their working hours in order to provide the fullest opportunity for them to express their decision.

We want to make it very clear that United Air Lines recognizes that how a representation election is conducted is the function of the National Mediation Board. We feel strongly, however, that the employees eligible to vote in the election should know all of the choices available to them at the time the voting takes place and how to express their own free choice. The form of ballot customarily used by the Board in elections does not do this since it provides spaces only to vote *for* a collective bargaining representative. It does not offer any way for an employee who does not want a collective bargaining representative to express his choice to remain unrepresented.

We are, of course, aware that under the Board's rules the employees can remain unrepresented if less than 51% of the craft or class cast valid ballots in the election. In effect, however, this means that the employee expresses his choice to remain unrepresented only in a negative manner—by not voting or by invalidating his ballot in some way. Further, to the best of our knowledge, neither the Notice of Election nor any other instructions on voting issued by the Board make clear to the employees how they can indicate their desire to remain unrepresented.

We recognize that the form of ballot customarily used by the National Mediation Board was adopted by the Board in 1934, prior to the appointment of any of the Board's present members. We further understand that the Board in the past has justified the form of its ballot on the ground that the Railway Labor Act contemplates that the employees shall have some form of representation. As stated by the National Mediation Board in "Administration of the

Railway Labor Act by the National Mediation Board, 1934-1957", pp. 18-19:

> "The above-quoted excerpts from the act show clearly that it was the intent of Congress in framing the 1934 Amendments to the original Railway Labor Act of 1926, that both the carriers and employees separately designate representatives for the purpose of collective bargaining. To effectuate this mandate of the Congress, the National Mediation Board, in 1934, designed the form of ballot which has been used without material change to the present time. *This ballot was drafted to permit the employees to secure some form of representation, as contemplated in the sections of the law quoted above.* It leaves to the majority of the employees of any craft or class full freedom to determine who shall be their representative for the purposes of the act." (Emphasis supplied.)

United suggests to the Board that the legislative history of the 1934 Amendments to the Railway Labor Act in no way supports the restrictive interpretation placed upon that Act in the above statement. In fact, it lends strong support to a contrary interpretation.

The House Report on H. R. 9861, i.e., the bill which was enacted into law on June 21, 1934 as the 1934 Amendments to the Railway Labor Act, states in pertinent part, as follows:

> "2. It (H. R. 9861) *provides* that employees shall be free to join any labor union of their choice *and likewise be free to refrain from joining any union if that be their desire* and forbids interference by the carrier's officers with the exercise of said rights." (Emphasis supplied.) (House Report No. 1944 to accompany H. R. 9861, U. S. House of Representatives, Committee on Interstate and Foreign Commerce, 73d Cong., 2d Sess., 1934 at p. 2.)

The bill being considered provided that "Employees shall have the right to organize and bargain collectively

through representatives of their own choosing." This is exactly the same language used in Section 2, Fourth, of the Railway Labor Act as finally enacted into law. It is evident, therefore, that the House Committee believed the right of employees to refrain from collective bargaining was implicit in the language of the bill.

It is also significant that the House Committee, unlike the National Mediation Board, saw nothing inherently inconsistent between the right of employees to refrain from collective bargaining and the language of Section 2 of the bill which states that one of the purposes of the Act is "to provide for the complete independence of carriers and of employees in the matter of self-organization . . ."

Further evidence that Congress did not intend to deny employees the right to refrain from engaging in collective bargaining is found in the following statement made by Commissioner Joseph P. Eastman, Federal Co-ordinator of Transportation and draftsman of the bill which was eventually enacted into law, in response to a question raised by Mr. Huddleston in the House Hearings on H. R. 7650:

> "Mr. Huddleston: Well, as I get your idea it is the purpose of this bill not to coerce organization and not necessarily to imply organization.
>
> "Commissioner Eastman: No, it does not require collective bargaining on the part of the employees. If the employees do not wish to organize, prefer to deal individually with the management with regard to these matters, why, that course is left open to them, or it should be." (Hearings, H. R. 7650, U. S. House of Representatives, Committee on Interstate and Foreign Commerce, 73rd Cong., 2d Sess. 1934 at p. 57.)

Further corroborating the foregoing evidence of legislative intent is the following statement by Senator Wagner in the Senate Hearings on S. 3266 (the companion bill in the Senate to H. R. 7650) in which he defends the bill

against charges that it would tend to promote large national labor organizations:

> "Senator Wagner: I am very glad you (Commissioner Eastman) are bringing out these points so very clearly. * * * (I) think that is the purpose of the Act—I think it is so expressed in language, to give the worker *a free choice to join* any union he wants, company union or *no union*, and yet they (i.e., the opponents of the bill) have insisted (that) by giving him free choice that it creates a large national union. I do not know how that conclusion is reached, but it has been broadcast, so I am very glad you are clearing that point." (Emphasis supplied.) (Hearings on S. 3266, U. S. Senate, Committee on Interstate Commerce, 73rd Cong., 2d Sess., 1934 at p. 12.)

Finally, there is the following comment by Senator Wagner at the Senate Hearings on S. 3266 in response to a charge made by Mr. M. W. Clement, Vice-President of the Pennsylvania Railroad Company, that the bill would have the effect of compelling employees to join a labor organization:

> "Senator Wagner: * * * I didn't understand these provisions compelled an employee to join any particular union. I thought the purpose of it was just the opposite, to see that the men have absolute liberty to join or not join any union or to remain unorganized.
>
> "Mr. Clement: That is the way we hope they will read when they are finally amended."

As you also are aware, the form of the National Mediation Board's ballot was the subject of court review in *McNulty* v. *National Mediation Board*, 18 F. Supp. 494 (N. D. N. Y., 1936). In that case the court decided that the form of the ballot used by the National Mediation Board was improper because it did not afford the employees an opportunity to truly express their will, stating on pp. 501-02 as follows:

> "It is manifest that this ballot did not present the issue to the eligible voters.

"The issue, of course, as the mediator admittedly found, was whether the men desired to continue under the individual contract method or the National Union representation.

"Concerning these two methods, the O. R. T. brief says: 'These two methods of employer-employee relationships are diametrically opposite, both in theory and practice. They have nothing in common. There can be no representation under the first method and representation is essential under the other.'

"But the employees had no opportunity to express a choice between these methods. They were in effect told that they must have representation for collective bargaining and were asked to elect between the National Union (O. R. T.) and an unknown.

"Unless the statute in question is meant to compel a majority of the employees (not an individual employee) to surrender their constitutional rights to contract for their own services, and the defendant O. R. T. does not so contend, then the ballot in question in no real sense determines whether the employees wish to retain the old method of individual bargaining, or prefer to change over to collective bargaining.

"In short, the ballot is an artificial thing in no wise disclosing which method of contracting the majority wish, but merely shows that, if they must have collective bargaining, they preferred the O. R. T. to some unknown person or organization.

"It is idle to say that 'it was not necessary for the contract men to affirmatively vote their desire in order to win but merely necessary that their vote be against representation by the O. R. T.'

"Fifty employees tried to do just that by putting an X mark in the square opposite the words 'if you desire representation by any other organization or individual mark an X in the square,' but because they did not write in the name of some organization or individual as representative in collective bargaining, the votes were declared void and not counted.

"The ballot gave them no opportunity to vote

against representation by the O. R. T., for their choice was limited to representation by O. R. T. or by some unknown representative."

Continuing this line of reasoning, the court stated:

> "Confronted with such a ballot, many may have feared that some militant group might want to write in the name of the president of the railroad or some obnoxious foreman, and, believing that they had to select some one to represent them in collective bargaining, rather than take such chances of an unknown representative, they voted for the known O. R. T.
>
> "How they would have voted had the real issue before them been presented by the ballot, no one knows or can know until another ballot presenting that issue is taken." (p. 502.)

Having concluded that the election was unfair, the court declined to exercise its discretionary power to grant the injunctive relief requested by O. R. T., explaining as follows:

> "Shall the court by mandatory injunction compel these men to have collective bargaining when they may not want it and compel the road to treat with the O. R. T. as representative in collective bargaining in such circumstances as here exist. Clearly not, unless the court has no other alternative. . . ." (pp. 502-503.)

The court found that it was not absolutely bound to enforce the certification issued by the N. M. B. under circumstances such as these where the manner of conducting the election offended the court's conscience.

No appeal was taken from the decision of the trial court, and although the Supreme Court subsequently held in the *Switchmen's* case (320 U. S. 297 (1943)) that a certification by the N. M. B. is not reviewable by a Federal District Court, the *McNulty* case is still persuasive authority in support of the proposition that the form of election ballot

presently used by the N. M. B. does not permit a true expression of employee sentiment.

We sincerely hope that the National Mediation Board will see its way clear to revise its election procedures so that our employees and employees of other carriers in future elections will have an opportunity to express their decision on all of the choices that are available to them, one of which is to remain unrepresented. We will be happy to discuss this matter further at the convenience of the Board.

Very truly yours,

/s/ CHARLES M. MASON,
Senior Vice President,
Personnel.

CMM:bg

cc: G. M. Harrison
A. J. Hayes
W. F. Klatte

Exhibit P

NATIONAL MEDIATION BOARD

(An Agency of the United States Government)

OFFICIAL BALLOT

Teletype Operators (Telegraphic Equipment Operators)
Employed by
United Air Lines, Inc.

Case No. R-3426

July 14, 1960 to August 8, 1960

A dispute exists among the above named craft or class of employees as to who are the representative of such employees designated and authorized in accordance with the requirements of the Railway Labor Act, and the National Mediation Board is taking a Secret Ballot in order to ascertain and to certify the name or names of organizations or individuals designated and authorized as representatives for the purpose of the Act.

If you desire to be represented by:
Air Line Communication Employees Association,
Unaffiliated
Mark an "X" in this square..... ☐

If you desire to be represented by:
Communication Workers of America, AFL-CIO
Mark an "X" in this square..... ☐

If you desire to be represented by:
Any Other Organization or Individual
Write name of such representative on the line below

_____

And mark an "X" in this square..... ☐

This Is A Secret Ballot. Do Not Sign Your Name.
(Marks in more than one square make ballot illegal.)
(Sample.)

Exhibit Q

UNITED AIR LINES
1200 Algonquin Road, Elk Grove Township, Illinois
Mailing Address: P. O. Box 8800, Chicago 66, Illinois
Office of the President

January 22, 1963

Honorable Francis J. O'Neill,
Chairman,
National Mediation Board,
Washington 25, D. C.

Dear Mr. O'Neill:

Mr. Mason, our Senior Vice President—Personnel, has shown me his letter to you concerning the Mediation Board's request to conduct an election on the property of United Air Lines in the craft or class of clerical and related employees. My personal interest in good labor relations and democratic practices cause me to supplement Mr. Mason's letter with some of my own views.

As I understand it, the ballot furnished to the employees by the National Mediation Board plainly states that the purpose of the election is for the employees to designate a union to represent them—not whether they want a union and, if they do, which one. Also the ballot has on it only the name of the one or more unions desiring to represent the employees and a blank space for the employees to vote for some other organization or individual not named on the ballot. This certainly leaves the employee with the inference that he has no choice but to vote *for* some union to represent him. Additionally, the Mediation Board does not tell the employee at any time how to express his choice if he wishes to remain unrepresented by a union.

What especially concerns me about this procedure is that it is carried on by an agency of the United States Government in the conduct of its official duties. In my opinion, this type of election procedure is not at all in keeping with the normal democratic processes of our country. It certainly cannot be the policy of the United States Government to conceal from employees all the choices available to them, one of which is to remain without union representation.

Since 1935, the National Labor Relations Board has conducted thousands of elections, in all of which provision is made on the ballot for employees to vote for one or more unions, or for no union. There appears to be nothing in the Railway Labor Act to prohibit using the same type of ballot that has been used for over 25 years in all National Labor Relations Board elections. In view of this, it is timely that the Government give free expression of choice to employees participating in representation elections under the Railway Labor Act, and establish a uniform procedure for conducting elections by all Boards authorized to conduct such elections.

I am taking the liberty of directing a copy of this letter to the Attorney General of the United States, and to the Secretary of Labor and hope that these gentlemen will take an interest in this matter, in view of the proper concern of the federal government for the rights of individuals. Additionally, they may wish to consider whether such a biased representation election procedure is in accordance with the national labor policy. I sincerely hope that you will undertake to confer with them concerning the policy of the United States Government on this question.

Although United Air Lines has had a great many years of fine and peaceful relations with its organized employees, I and my associates in the Company feel that the type of election conducted in the past by the National Mediation

Board is not in the best interest of good labor relations or in accord with democratic principles which provide individuals with a full and fair opportunity to express their choice in matters which vitally affect them. I, therefore, sincerely hope and urge your Board to review your election procedures within the Government and to take necessary corrective action so that United's employees and other employees who will vote in future elections will be able to freely express their own will with respect to union representation.

Respectfully submitted,

WILLIAM A. PATTERSON,
President.

cc: Honorable Robert F. Kennedy,
Attorney General.
Honorable W. Willard Wirtz,
Secretary of Labor.

Exhibit R

NATIONAL MEDIATION BOARD
Washington

January 24, 1963

NMB Case No. R-3590

Mr. Charles M. Mason, Sr. Vice President,
United Air Lines, Incorporated,
P. O. Box 8800,
Chicago 66, Illinois.

Dear Mr. Mason:

Further reference is made to your letter of January 18, 1963 on the general subject of the form of ballot used by the National Mediation Board in conducting employee representation elections under Section 2, Ninth of the Railway Labor Act.

As you have been previously advised, the Board has consistently held, a carrier is not a party to a representation dispute involving the selection of a representative of its employees. However, the Board welcomes the expression of your views and will give you a summary of its practices and rules in the matter of holding representation elections which have been developed as the best and most practicable procedures to insure that such elections will be fair and free from interference, influence and coercion.

As you state in your letter, the form of ballot presently used was adopted by the Board in 1934 and has been used since that time as the form best designed to ascertain the representation desires of a carrier's employees for the purpose of collective bargaining. The blank line appearing on the present form of ballot affords an opportunity to the

voter to vote for some organization or individual other than those named on the ballot, or he may refrain from voting at all if he so chooses. There is no compulsion that he vote for a contestant for representation. Introduction of a "yes" or "no" ballot would contribute to, if it did not actually encourage, an attempt to circumvent the mandate of Congress that representatives be designated by carriers and their employees for the purposes described in Section 2, First and Second of the Railway Labor Act, which are quoted below for ready reference:

> "First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.
>
> "Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute."

The Board has reviewed your reference to the case of *McNulty* v. *National Mediation Board*, 18 F. Supp. 494 (N. D. N.Y., 1936), contained on pages 4, 5 and 6 of your letter. Your quotations from the decision of the District Court omits reference to the fact the National Mediation Board was removed as a party to this case during the Court proceedings. The Judge's opinion contained the following statement not quoted in your letter:

> "The National Mediation Board not being a party to this suit, the Court can make no order directly affecting that Board. * * * The conclusion then is that no

party is entitled to affirmative relief. The complaint and the cross complaints are all dismissed without cost to any party against any other party.'''

It will be observed that the decision of the Court in the *McNulty* case in no way ordered discontinuance of the form of ballot customarily used by this Board. Since the Board's certification in that case was not set aside, the comment of the Court on the form of ballot must be regarded as *obiter dictum*. The *McNulty* case has never been considered by the National Mediation Board as controlling the Board's functions or practices under the Railway Labor Act.

In light of the above, this Board sees no reason to deviate from its customary form of ballot in the current dispute, and it will be used by the mediator in conducting the election in NMB Case No. R-3590.

By direction of the National Mediation Board.

/s/ E. C. THOMPSON,
E. C. Thompson,
Executive Secretary.

cc-to: G. M. Harrison,
A. J. Hayes,
Wm. F. J. Klatte.

Exhibit S

February 1, 1963

Mr. Leverett Edwards,
Chairman,
National Mediation Board,
Washington, D. C.

Dear Mr. Edwards:

We have the Board's letter of January 24, NMB Case No. R-3590, in reply to our letter of January 18 on the form of ballot being used by the National Mediation Board. We appreciate the Board's furnishing us with a summary of its practices in holding representation elections.

We understand your letter to say that if the Board used a ballot that allows employees to express a desire to remain unrepresented, this would somehow circumvent a mandate of Congress that employees shall be represented. In short, employees must be represented by a union or other organization or individual. In other words, it has been the view of the Board that the purposes of the Act would be defeated by carriers treating separately with individual employees and that therefore employees are not given freedom to express a choice in a Mediation Board election between being represented or remaining unrepresented. Rather, the Board has limited employee voting to a determination of who shall be designated as the representative of the employees in the appropriate class or craft—and not whether there shall be any representative at all. Please advise us if this does not correctly reflect the Board's policies and practices.

We appreciate that the Board's position stems from the adoption of the present form of ballot in 1934, well before the appointment of the present members of the Board. We

think, however, that the present Board should re-examine its position to see whether it is based upon a proper interpretation of the Railway Labor Act in light of the facts in this case. Stated in another way, irrespective of the type of ballot used by the Board in other elections, the facts of this election justify Mediation Board action to use a ballot which gives employees an opportunity to indicate whether they do or do not want union representation. In the forthcoming election, there are approximately 9,700 employees eligible to vote who are not now and never have been represented by a labor organization. These employees, together with 3,000 of our organized employees, will be eligible to participate in the largest single airline employee representation election ever held by the National Mediation Board since the airlines were placed under the Railway Labor Act.

The Board has said that in instances where the employees are not represented, the representation dispute is between the employees who desire representation on the one hand and the employees who do not desire representation or who are indifferent on the other. As the Board stated in its Twenty-Seventh Annual Report, p. 37:

> "... in a dispute where employees are seeking to designate a representative for the first time the dispute is between those who favor having a representative as opposed to those who are indifferent or are opposed to having a representative for the purpose of the act."

Especially in this case, where such a large number of presently unrepresented employees are involved in the election, it seems entirely appropriate that such employees have an opportunity to indicate a desire to maintain their present status. Contrariwise, it seems entirely improper that the employees who may not want to be represented or who are indifferent—whom the Board recognizes as one of the parties in a representation dispute among unorganized

employees—should be offered an election procedure which fails to provide a way to express a choice to remain unrepresented.

The Board's present form of ballot concerns United because it may thwart the desire of the majority of an unrepresented craft or class to remain unrepresented, if that is their desire. The purpose of the Act to promote stable labor relations will not be effectuated by forcing an unwilling majority of employees in a craft or class to have their rates of pay and working conditions established through a process they do not want. A contrary result may well be reached.

Section 2, Fourth, of the Railway Labor Act is the section of the Act which relates directly and specifically to the employees' right to organize and bargain collectively. It provides that:

> "Employees shall have the *right* to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purpose of this Act." (Emphasis supplied.)

The Board's election procedure clearly recognizes the right of a majority of a craft or class to organize and bargain collectively if it chooses to exercise that right. There is, however, a large gap between recognizing the existence of a right and making the exercise of that right a mandatory requirement—which is in effect what the Board's voting procedures do. In fact, compelling employees to organize and bargain collectively effectively abridges the employees' right granted them in Section 2, Fourth. A right is no longer a right when one is compelled to exercise it but is transformed into a duty. Such a transformation obviously is contrary to the language of the Act and the Congressional intent. Section 2, Fourth, properly leaves

the initiative in determining whether to organize and bargain collectively to the majority of the employees of the craft or class. That initiative is improperly removed from the employees by election procedures which assume—prior to an election—that the choice available to them is only a choice between representatives.

The provisions of the Railway Labor Act upon which the Board bases its election policy and practices do not sustain the Board's interpretation. The Board's conclusion that there is a "mandate of Congress" that representatives be designated by employees apparently is based on Section 2, First and Second, quoted in the Board's letter. Section 2, First and Second, however, do not deal with the question of whether employees shall be represented or, if they do, how they designate their representative. This function is performed by Section 2, Fourth, of the Act, which, as we have already shown, clearly contemplates that the employees themselves can choose whether or not they want to be represented. Section 2, Ninth, which empowers the Board to establish its election procedures, merely gives to the Board authority to provide the proper mechanics to determine whether the majority of the employees desire to exercise the right to organize and bargain collectively guaranteed to them by Section 2, Fourth. In other words, the Board's election procedures cannot properly exceed the scope of Section 2, Fourth, and compel organization contrary to the wishes of the majority.

If the Congress intended that the Railway Labor Act require employees to be represented, that mandate would have appeared in Section 2, Fourth, of the Act, which is specifically concerned with the matter of employee organization and representation. It would be extremely unlikely that a matter so important as a Congressional mandate that employees shall be represented would be found by implication in a section of the Act which does not by its language

even refer to the matter of representation. The language of Section 2, Second, also relied on by the Board, is easily reconcilable with the recognition of a right by employees to deal with a carrier as individuals rather than through collective bargaining representatives. Obviously, Section 2, Second, which provides that "All disputes between a carrier . . . and its employees . . . . shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute" becomes applicable only after the employees and the carrier have designated and authorized representatives. When employees deal with a carrier as individuals, the conference procedure contemplated by Section 2, Second, is simply inapplicable. This is shown by the testimony before the House Committee on Interstate and Foreign Commerce of Commissioner Eastman, draftsman of the 1934 Amendments to the Railway Labor Act. Commissioner Eastman stated that it was not the purpose of the bill which was eventually enacted into law to coerce organization or to require collective bargaining on the part of the employees. Rather, as Commissioner Eastman stated:

> "If the employees do not wish to organize, prefer to deal individually with the management with regard to these matters, why, that course is left open to them, or it should be."

The legislative history of the 1934 Amendments to the Railway Labor Act shows conclusively the Board's present procedures are in direct conflict with the intent of the Congress. It was for that reason that we made several references to the legislative history in our letter of January 18. We know that the Members of the National Mediation Board, like the members of any other administrative agency, would not wish to continue a policy which is in con-

flict with the intent of Congress in the law under which the agency is established and operates. We would, therefore, appreciate the Board's comments on this history since this point was not answered in the Board's reply to United dated January 24.

The Board's reply to our letter of January 18 notes that the *McNulty* case did not order discontinuance of the form of ballot customarily used by the Mediation Board since the Mediation Board was removed as a party to this case during the court proceedings. We did not cite the *McNulty* case as support for the proposition that the Board was ordered by the court to stop using its customary ballot. Our point in raising the *McNulty* case, which we believe is clear from our letter, is that the court in the *McNulty* case recognized that the form of election ballot presently used by the National Mediation Board does not permit a true expression of employee sentiment. In fact, the court in the *McNulty* case considered and rejected the interpretation of the Railway Labor Act that the employees must have representation for collective bargaining. Thus, the court stated:

> "The issue, of course, as the mediator admittedly found, was whether the men desired to continue under the individual contract method or the National Union representation.
>
> • • • • •
>
> "But the employees had no opportunity to express a choice between these methods. They were in effect told that they must have representation for collective bargaining and were asked to elect between the National Union (O. R. T.) and an unknown.
>
> • • • • •
>
> "In short, the ballot is an artificial thing in no wise disclosing which method of contracting the majority wish, but merely shows that, if they must have collective bargaining, they preferred the O. R. T. to some unknown person or organization."

The fact that the National Mediation was, by consent of the parties, dismissed from the suit as a party defendant does not erase the fact that the Board's form of ballot was found by the court to be improper because it did not afford the employees an opportunity to truly express their will.

The balloting policies of the Mediation Board are in striking contrast to those followed by the National Labor Relations Board. The thrust of these sister statutes—the Railway Labor Act and the National Labor Relations Act—has been judicially found to be the same. The National Labor Relations Board, however, has adopted a form of election ballot which gives to employees the right to express their choice as to whether they do or do not want representation. On the other hand, the National Mediation Board has adopted a form of election ballot which effectively denies the employees that right. The completely contrary election procedures used under these companion laws cannot be reconciled.

United Air Lines renews the pleas of Mr. W. A. Patterson's letter of January 22 to the Board. The Mediation Board is urged to review its election procedures with the Attorney General of the United States and the Secretary of Labor to determine whether the Board's present policy and practices are consistent with the intent of Congress and the national labor policy.

Sincerely yours,

/s/ CHARLES M. MASON,
Charles M. Mason,
Senior Vice President—
Personnel.

cc: Honorable Robert F. Kennedy,
Attorney General,
Honorable W. Willard Wirtz,
Secretary of Labor.

Exhibit T

NATIONAL MEDIATION BOARD

Washington

February 7, 1963

Case No. R-3590

Mr. Charles M. Mason, Sr., Vice President
United Air Lines, Incorporated
P. O. Box 8800
Chicago 66, Illinois.

Dear Mr. Mason:

Acknowledgement is made of your letter of February 1, 1963, to Chairman Edwards, on the subject of MMB Case No. R-3590.

The Board sees no useful purpose to be served by continuing the exchange of correspondence concerning the views of United Air Lines, Inc., on the various aspects of the handling of this case. We will, however, comment briefly on two points made in your letter. As stated in our letter of January 24, 1963 it is the Board's view that the Congress intended that the purposes of the Railway Labor Act, expressed in Section 2 (1), General Purposes and Section 2, First and Second, should be effectuated through collective bargaining between carriers and their employees, through duly designated and authorized representatives. Decisions of the United States Supreme Court support this view.

In its decision No. 324, October term 1936, in the case of the Virginian Railway Company vs. System Federation No. 40, Railway Employees Department of the American

Federation of Labor, etc. et al., the Court said, referring to Section 2, Third, of the Railway Labor Act:

> "Under the last mentioned provision this court held, in the *Railway Clerks* case, supra that employees were free to organize and make choice of their representatives without the 'coercive interference' and 'pressure' of a company union organized and maintained by the employer; *and that the statute protected the freedom of choice of representatives, which was an essential part of the statutory scheme,* with a legal sanction which it was the duty of courts to enforce by appropriate decree". (Emphasis supplied)

In the same decision, the Court stated:

> "Petitioner argues that the phrase 'treat with' must be the equivalent of 'treat' in its intransitive sense, as meaning 'regard' or 'act towards' so that compliance with its mandate requires the employer 'to meet with the authorized representative of the employees only if and when he shall elect to negotiate with them'. This suggestion disregards the words of the section *and ignores the plain purpose made manifest throughout the numerous provisions of the Act. Its major objective is the avoidance of industrial strife, by conference between the authorized representatives of employer and employee.*" (Emphasis supplied)

Again, in the Supreme Court's decision No. 112 and 1023, 1940 term, March 4, 1942, in the case of Williams, etc. et al. v. Jacksonville Terminal Company; Pickett, etc. v. Union Terminal Company, the court said:

> "The object of the Act is to avoid interruption to commerce through *the promotion of free association among employees for the purposes of settling disputes between them and the carriers*" • • • "These additions (Section 2, Seventh and Section 6) *point squarely to limiting the barggining provisions of the Railway Labor Act to collective action.*" (Emphasis supplied)

On Page 2 of your letter you state:

> "The Board's present form of ballot concerns United because it may thwart the desire of the majority of an unrepresented craft or class to remain unrepresented, if that is their desire. The purpose of the Act to promote stable labor relations will not be effectuated by forcing an unwilling majority of employees in a craft or class to have t rates of pay and working conditions established through a process they do not want. A contrary result may well be reached."

You apparently do not have a clear understanding of the Board's election procedures. Succinctly stated, they are: to have a valid election under Section 2, Ninth of the Act, a majority of the employees in the craft or class must cast valid ballots, i.e., ballots for a recognizable organization or an individual not an officer of the carrier. In such a situation, a majority of the valid ballots cast will elect a representative. If no organization or individual receives a clear majority of valid ballots cast, or if less than a majority of eligibles cast valid ballots, there is no election. In the event a majority of eligibles cast valid ballots, and votes are cast for three or more organizations or individuals, and no one receives a majority of the total valid ballots cast, Rule 1206.1 of the Board's rules applies. The situation of "forcing an unwilling majority, etc." is not possible under the above rules and procedures.

The comments on the *McNulty* case made in our letter of January 24, 1963 need not be restated here.

The laws governing this Board and the National Labor Relations Board differ in many respects. The form of ballot used by the NLRB is adapted to the law under which that agency operates. The same applies to the ballot used by the National Mediation Board. We wish to remind you that this Board is an independent agency in the Executive Branch of the Government reporting directly to the Congress. Consultations such as suggested in the last

paragraph of your letter are neither necessary nor appropriate.

The Board will proceed with an election among the employees concerned in NMB Case No. R-3590 under the Board's usual policies and procedures in such cases.

By direction of the National Mediation Board.

/s/ E. C. THOMPSON,
Executive Secretary.

Exhibit U

NATIONAL MEDIATION BOARD

Washington

January 25, 1963

Statement

The National Mediation Board has received a large number of telegrams and letters from individuals and groups signing themselves as employees of United Air Lines, Inc., in connection with NMB Case No. R-3590. This case covers application filed by the Brotherhood of Railway & Steamship Clerks for investigation of a representation dispute among the craft or class of Clerical, Office, Stores, Fleet and Passenger Service Employees of United Air Lines, Inc.

This craft or class was found by this Board in Case No. R-1706 et al. to be the appropriate grouping of these employees for representation purposes under Section 2, Ninth of the Railway Labor Act. Case No. R-3590 is being investigated on that basis. The parties to this dispute are

the Brotherhood of Railway & Steamship Clerks, who invoked the Board's services, and the International Association of Machinists, AFL-CIO, which organization now represents the Stores, Ramp and Fleet Service Employees of United, also a number of employees performing janitorial service. United Air Lines, Inc., is not, and cannot be, a party to this representation dispute.

On September 7, 1962, and January 11, 1963, United Air Lines requested this Board to hold a hearing to establish the proper crafts or classes on United which are involved in this dispute. The Board, on January 17, 1963 replied to United, pointing out the fact that the Carrier is not a party to this matter, and also pointing out that neither of the organizations who are parties to this case have made any request for a hearing on the question of craft or class. The Board, therefore, denied the request of United for such a hearing.

On January 18, 1963 United Air Lines protested the form of ballot customarily used by this Board, and requested that the Board revise its election procedures so that the ballot would contain a space for a vote for no representation. The Board on January 24, 1963 replied to United calling attention to the fact that the Board's present form of ballot, adopted in 1934, was designed to ascertain the representation desires of a carrier's employees for collective bargaining under the Railway Labor Act. The Board's standard form of ballot carries lines for voting for the contesting parties, and a blank line on which a voter may vote for some organization or individual other than those named on the ballot. There is no compulsion that he vote for a contestant for representation.

The Board is making this statement for distribution to

the employees interested in this representation dispute, since it is obviously not possible to answer all the inquiries it has received from individual employees or groups of employees.

The Board's mediators are now on the property proceeding with plans for an election on the above basis.

E. C. THOMPSON,
Executive Secretary.

NLRB 707
(2-62)

Exhibit V.

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

NOTICE OF ELECTION

RIGHTS OF EMPLOYEES

Under Section 7 of the National Labor Relations Act, employees have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities.

PURPOSE OF ELECTION

An election by secret ballot will be conducted, under the supervision of the Regional Director of the National Labor Relations Board, among the eligible voters described herein, to determine the representative, if any, desired by them for the purpose of collective bargaining with their employer.

SECRET BALLOT

The election will be by SECRET ballot. Voters will be allowed to vote without interference, restraint, or coercion. Electioneering will not be permitted at or near the polling place. Violations of these rules should be reported immediately to the Regional Director or his agent in charge of the election. Your attention is called to Section 12 of the National Labor Relations Act:

ANY PERSON WHO SHALL WILLFULLY RESIST, PREVENT, IMPEDE OR INTERFERE WITH ANY MEMBER OF THE BOARD OR ANY OF ITS AGENTS OR AGENCIES IN THE PERFORMANCE OF DUTIES PURSUANT TO THIS ACT SHALL BE PUNISHED BY A FINE OF NOT MORE THAN $5,000 OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BOTH.

An agent of the Board will hand a ballot to each eligible voter at the voting place. The voter will then mark his ballot in secret in a voting booth and fold it. The voter will then personally deposit the folded ballot in a ballot box under the supervision of an agent of the Board. A majority of the valid ballots cast will determine the results of the election.

Incorporated herein, for your information only, is a copy of the official ballot.

AUTHORIZED OBSERVERS

Each of the interested parties may designate an equal number of observers, this number to be determined by the Regional Director or his agent in charge of the election. These observers will (a) act as checkers at the voting place and at the counting of ballots, (b) assist in the identification of voters, (c) challenge voters and ballots, and (d) otherwise assist the Regional Director or his agent.

ELIGIBILITY RULES

Employees described under VOTING UNIT in this Notice of Election who did not work during the designated payroll period because they were ill or on vacation or temporarily laid off and employees in the military service of the United States who appear in person at the polls shall be eligible to vote. Also eligible are those employees engaged in an economic strike which commenced less than twelve (12) months before the election date and who retained their status as such during the eligibility period, and their replacements. Employees who have quit or been discharged for cause since the designated payroll period and employees engaged in a strike who have been discharged for cause since the commencement thereof, and who have not been rehired or reinstated prior to the date of the election, and employees engaged in an economic strike which commenced more than 12 months prior to the date of the election and who have been permanently replaced, shall not be eligible to vote.

CHALLENGE OF VOTERS

The challenge of a voter MUST be made before the voter has deposited his ballot in the ballot box.

INFORMATION CONCERNING ELECTION

The Act provides that only one valid representation election may be held in a 12-month period. Any employee who desires to obtain any further information concerning the terms and conditions under which this election is to be held or who desires to raise any question concerning the holding of an election, the voting unit, or eligibility rules may do so by communicating with the Regional Director or his agent in charge of the election.

NAME OF COMPANY

STEPAN CHEMICAL COMPANY
Elwood, Illinois

13-RC-9137
Stipulation

VOTING UNIT

Those eligible to vote are all production and maintenance employees and laboratory employees of the Employer at its Millsdale plant, Elwood, Illinois, who were employed during the payroll period ending January 27, 1963, but excluding office clerical employees, plant clerical employees, professional employees, truck drivers, guards and supervisors as defined in the Act.

TIME AND PLACE OF ELECTION

DATE: February 13, 1963 TIME: 6:30 a.m. to 8:00 a.m. and 2:30 p.m. to 4:00 p.m.

PLACE: Conference room, second floor of lunchroom building

"Employees are asked to vote either before reporting for work of after the end of their particular shift."

UNITED STATES OF AMERICA

National Labor Relations Board

OFFICIAL SECRET BALLOT

SAMPLE

FOR CERTAIN EMPLOYEES OF
STEPAN CHEMICAL COMPANY

Do you wish to be represented for purposes of collective bargaining by

OIL, CHEMICAL & ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO

MARK AN "X" IN THE SQUARE OF YOUR CHOICE

YES	NO
☐	☐

DO NOT SIGN THIS BALLOT. Fold and drop in ballot box.
If you spoil this ballot return it to the Board Agent for a new one.

81

THIS IS THE ONLY OFFICIAL NOTICE OF THIS ELECTION AND MUST NOT BE DEFACED BY ANYONE

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

Affidavit

C. P. HUTCHENS, being first duly sworn, on oath deposes and says:

1. I am the Administrative Assistant to the Director of Personnel Field Services, United Air Lines, Inc. ("United"). Prior to June 1, 1961, I was employed by Capital Airlines, Inc. ("Capital") in various capacities, serving from February, 1947 to May, 1951 as Capital's Superintendent of Stations; from May, 1951 to March, 1957 as Executive Assistant to Capital's Vice President Operations and Maintenance; from March, 1957 to November, 1959 as Capital's Manager of Personnel; and from November, 1959 to June, 1961, at which time Capital merged into United, as Capital's Director of Personnel.

2. As Director of Personnel at Capital, I was responsible for among other things assisting in administering the collective bargaining agreement in force between The Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees ("Brotherhood") and Capital covering employees classified as "clerical, office, stores, freight and passenger service employees." The duties performed by such employees at Capital were substantially similar to the duties performed by the employees at United designated by the National Mediation Board in R-3590 as eligible to participate in the forthcoming election.

3. The collective bargaining agreement in force between Capital and the Brotherhood until the merger of Capital into United in June, 1961 contained provisions relating to seniority which had the effect of permitting senior

employees, regardless of job classification, to exercise promotional, assignment and displacement rights in other classifications, fitness and ability being sufficient. By virtue of this provision, it became standard practice at Capital for employees with seniority to transfer to job classifications for which they had inadequate experience or qualifications. While Capital had the contract right to refuse transfer on the basis of insufficient "fitness and ability," this right became largely ineffective because of the interpretation of "fitness and ability" as being the minimum ability to perform the work regardless of the retraining required.

4. By reason of this seniority provision, Capital was compelled to retrain persons transferring from one classification to another by virtue of promotion, assignment or displacement. In the period this seniority provision was in effect, Capital incurred great expense in retraining personnel involved in inter-classification transfers. Additionally, since personnel engaged in public contact and sales work required special personality and appearance qualifications, transfers from other classifications by employees lacking such qualifications must have contributed to a decline in Capital's sales.

5. The constant shifting of personnel into classifications for which employees were either unsuited or untrained created administrative problems which were never solved. In the first place, hiring standards for public contact personnel became meaningless when employees not hired for that purpose exercised promotional or displacement rights. Secondly, employee morale and productive inefficiency became serious problems by reason of seniority promotions and assignments from and into classifications having ne functional similarity. Finally, in each case of promotion, reassignment, lay-off or increase in the work force, the possibility had to be considered that the vacancy

thus created would be filled by a person unable to meet job standards.

6. The problems encountered by Capital in attempting to administer three separate functional groups as a single unit—aggravated considerably by a seniority system which ignored functional lines—will inevitably arise at United. Experience at Capital has shown that an improper craft or class determination can have a detrimental impact upon the operations of the carrier. If United is to avoid the detrimental impact suffered by Capital, it will be in its interest to resist any effort to impose upon it a seniority provision which cuts across functional lines and gives rise to the training, hiring, morale and administrative problems with which Capital was plagued. In my judgment, in order to preserve efficiency of operations and high service standards, when faced with a single organization representing two or more diverse groups of employees, a carrier must take a firm position respecting seniority rights. This will lessen rather than contribute to the stable labor relations which the Railway Labor Act was designed to maintain.

/s/ C. P. HUTCHENS.

Subscribed and Sworn To before me this.....day of February, 1963.

.....

Notary Public.

STATE OF ILLINOIS }
COUNTY OF COOK } ss.

Affidavit

DAVID S. RITNER, being first duly sworn, on oath deposes and says:

1. I am Vice President, Employee Development, United Air Lines, Inc. ("United").

2. The employees of United described as "clerical, office, stores, fleet and passenger service employees," designated by the National Mediation Board ("Board") as the employees eligible to participate in a representation election (R-3590), number approximately 12,700 employees located in approximately 100 cities in 32 states and the District of Columbia. The group embraces employees performing duties in job classification varying from electronic computer operators to ticket agents, to cleaning women.

3. United employs approximately 32,000 persons. A work force of this size requires an organizational and administrative structure geared to resolve difficult problems of supervision, training and productive efficiency. At the heart of United's organizational and administrative system is a careful classification of employees by job function.

4. The Board's "determination" that clerical, office, stores, passenger and fleet service employees constitute a single craft or class is completely inconsistent with United's system of organization. In my judgment, the absence of community of interest existing among employees performing work in such diverse classifications will disrupt United's organizational flexibility by imposing upon it artificial, non-functional criteria. Administrative efficiency and employee morale will decline to the great detriment of United and the public it serves. Over one-third of United's total

work force is involved. The impact, therefore, will be of the most serious nature.

5. The 12,700 employees involved are divided along the following functional lines:

(1) *Office and clerical*: These employees perform duties of an essentially clerical nature and include stenographers, office typists, file clerks, bookkeepers, office machine operators, receptionists, telephone operators, record custodians, ticket examiners, timekeepers, record clerks, rate clerks, and payroll clerks, and kindred employees.

(2) *Public Contact*: This group includes reservation and ticket sales agents, telephone sales agents, vacation booking agents, passenger agents, passenger relations correspondent, station agents, air freight agents, customer services agents and other personnel whose duties are performed primarily with and before the public.

(3) *Ramp and Stores Employees*: Employees in the *ramp* group service aircraft at ramps and terminals involving only the loading, stowing, unloading and pick-up and delivery of all cargo including mail, express, baggage, freight, company material, buffet and food supplies and cabin supplies in accordance with flight loading plans, and the preparation of records in connection therewith; the cleaning of aircraft in connection with through service and operation of automotive and other ramp equipment for servicing aircraft, and may include preparing or helping in the preparation of loading plans, maintaining the ramp area and equipment in a clean, presentable condition, and other general ramp service work. Ramp servicemen may be required to refuel, spot, block, stand fire guard and wave off aircraft when mechanic personnel are not available for the assignment. *Stores* employees per-

form storeroom work including receiving; shipping; checking; inspecting; classifying; issuing; inventorying; storing of supplies, equipment and materials; the operation of stores equipment, including driving of trucks; the preparation and maintenance of required records and reports; the transfer of parts and materials between locations at a Maintenance Base; and other storeroom work.

These groups are separate and distinct, both in their job function and supervision. The hiring qualifications differ for each group. Ramp and stores employees, for example, perform duties of an essentially physical nature, are almost universally male employees, and need not have the training and education expected of clerical or public contact personnel. The clerical personnel are generally female, perform little physical work and rarely deal with the public. Public contact personnel are of both sexes, and perform work requiring personality and appearance standards which differ substantially from the others. For these reasons, there is little identification by one group with the others and no community of interest among them.

6. The Board's announced criteria for craft or class determinations reflect the severe impact an improper determination can have upon a carrier. Thus, the Board emphasizes the "qualifications, duties, and responsibilities of the employees, the nature of their work and their community of interest." In addition, the circumstances of the particular dispute and the relative permanency of employee groupings along craft or class lines on carriers generally are also relevant. The purpose to be served by proper craft or class determinations is the promotion and maintenance of harmonious labor and bargaining relations between the employees, their representative, and the carrier involved. The factors relied on by the Board to determine the appropriate craft or class are the very factors

which are most important to United in devising a smoothly functioning administrative and organizational system.

7. The combining of three diverse groups of employees into one craft or class will force upon United the myriad administrative difficulties which flow from improper employee grouping, and which have a direct impact upon the ability of United to discharge its obligations as an air carrier subject to the Federal Aviation Act. From an administrative viewpoint, a craft or class which embraces diverse groups lacking any cohesive identity of interest raises the same problems as a craft or class which embraces but a part of one group, but in either case efficiency and employee morale suffer.

8. United has a vital interest in any craft or class determination affecting its employees. An improper determination, which ignores the qualifications, duties, and responsibilities of the employees, the nature of their work and their identity of interest, has substantial and adverse impact upon United employees, and thereby on the ability of United to operate in the most efficient manner.

/s/ DAVID S. RITNER.
David S. Ritner.

Subscribed and sworn to before me this ..... day of February, 1963.

.....
Notary Public.

IN THE UNITED STATES DISTRICT COURT

For the District of Columbia

United Air Lines, Inc., *Plaintiff*,

v.

National Mediation Board, et al., *Defendants*.

Civil No. 402-63

Motion of Defendants to Dismiss the Complaint or, in the Alternative, For Summary Judgment.

Come now defendants, by their attorneys, and move to dismiss the complaint or, in the alternative for summary judgment, upon the grounds that there is no genuine issue of material fact and that defendants are entitled to judgment as a matter of law in that:

1. The Court is without jurisdiction over the subject matter; and

2. Plaintiff lacks standing to maintain this action; and

3. The complaint fails to state a justiciable controversy and

4. Plaintiff is not entitled to injunctive relief since

(a) the action is premature;

(b) plaintiff does not demonstrate irreparable injury; and

(c) the action taken by the National Mediation Board is not erroneous,

and in support thereof the Court is referred to the affidavit of Eugene C. Thompson, Executive Secretary of the Na-

tional Mediation Board, dated March 5, 1963, the exhibits attached thereto, and the memorandum of points and authorities, all attached hereto and made a part hereof.

JOHN W. DOUGLAS,
Acting Assistant Attorney General,

DONALD B. MACGUINEAS,
Attorney, Department of Justice,

HARLAND F. LEATHERS,
Attorney, Department of Justice,

RICHARD S. BEATTY,
Attorney, Department of Justice,
Attorneys for Defendants.

Affidavit

CITY OF WASHINGTON
DISTRICT OF COLUMBIA } ss.

EUGENE C. THOMPSON, being first duly sworn, deposes and says:

1. I am the Executive Secretary of the National Mediation Board, and as a part of my official duties have custody of the Board's files and records. I have examined the Board's files and records relating to NMB Case No. R-3590 involving representation of Clerical, Office, Stores, Fleet and Passenger Service employees of United Air Lines, Inc. (hereinafter referred to as United), and find the following information therein concerning this case.

2. On August 24, 1962, the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes (AFL-CIO), (hereinafter referred to as BRC) filed application pursuant to Section 2, Ninth, of the Railway Labor Act, amended (45 U.S.C.A. 152.9) for investi-

gation of a representation dispute among the craft or class of employees of United "Commonly known as clerical, office, stores (excluding stores employes represented as of August 24, 1962, by the International Association of Machinists), fleet (excluding fleet service employes represented as of August 24, 1962, by the International Association of Machinists) and passenger service employes." As a result of preliminary examination to which all such applications are subject, the craft or class designation above stated was questioned by the Board in letter dated August 27, 1962, (copy attached marked Exhibit 1) to Mr. George M. Harrison, Grand President of the Brotherhood of Railway and Steamship Clerks. Mr. Harrison's explanation of the craft or class designation shown in his application was contained in letter to the Board dated August 27, 1962. (Copy attached to Mr. Mason's affidavit marked Exhibit A).

3. On August 30, 1962, United and the International Association of Machinists (hereinafter referred to as IAM) were advised of this application and requested to submit their statements in respect thereto. United was also requested to furnish the total number of employees covered by this application. (Copy attached to Mr. Mason's affidavit as Exhibit B).

4. On September 7, 1962, United responded to our letter of August 30, 1962, (copy attached to Mr. Mason's affidavit as Exhibit C) stating it is the carrier's position that the BRC application involved only a party of a group of employees which the Board had found to constitute a craft or class, and it should, therefore, be dismissed. The carrier also advised they would not, at that time, furnish the number of employees involved. On September 11, 1962, the IAM replied to our letters advising that in their opinion the craft or class covered by the BRC application did not conform to the Board's findings, particularly as set forth

in NMB Case No. R-1706, et al., (copy attached to Mr. Mason's affidavit as Exhibit E),

5. The BRC, on October 5, 1962, amended its application to cover the craft or class commonly known as Clerical, Office, Stores, Fleet and Passenger Service employees (copy attached to Mr. Mason's affidavit as Exhibit G). After further exchange of correspondence with United and IAM, the amended application, covering the craft or class of Clerical, Office, Stores, Fleet and Passenger Service employees, as established in determination issued by this Board in Case No. R-1706, et al., dated January 31, 1947, (copy attached marked Exhibit 2) was docketed as NMB Case No. R-3590, on November 8, 1962.

6. Mediator William F. J. Klatte was assigned to conduct an investigation of this case commencing November 19, 1962. This investigation consisted of checking the authorization cards furnished by the BRC in support of their application against a list of employees furnished by the carrier for that purpose. On December 19, 1962, the National Mediation Board authorized an election be conducted among the employees involved based on Mediator's report that his investigation showed sufficient evidence to warrant finding that a representation dispute existed among these employees under the Board's rules. (Copy attached marked Exhibit 3. See Part 1206).

7. On December 19, 1962, prior to recessing this case for the holidays and to allow the Mediator to attend the Board's Annual staff meeting, the Mediator advised the officers of United that the National Mediation Board had ordered an election among the employees in question and requested a list of employees involved showing names, occupations, locations, and home mailing addresses to be ready when the Mediator returned on January 14, 1963. Upon his return on January 14, 1963, the Mediator inquired about the status of the preparation of this list, and was

informed the carrier had decided the request for this list was premature in the absence of a ruling from the Board on United's request, dated September 7, 1962, that a public hearing be held to establish the proper craft or class of employees involved in this case. The company renewed this request in letter dated January 11, 1963. (Copy attached to Mr. Mason's affidavit as Exhibit K). After consideration of this letter the Board replied under date of January 17, 1963, (copy attached to Mr. Mason's affidavit as Exhibit L) calling attention to the fact that in the Board's opinion the carrier is not, and cannot be, a party to this representation dispute. This opinion is based on the National Mediation Board's policy, formulated early in the Board's history under the 1934 amendments to the Railway Labor Act, which has been enunciated many times in our annual reports and communications to rail and air carriers subject to the Act.

8. Our letter of January 17, 1963, also denied the carrier's request for a hearing on the craft or class established under Case No. R-1706, et al., for the reason that the carrier is not, in the Board's view, a party to this representation dispute. The Board also called attention to the fact that no such request had been received from either party to this dispute, namely, the BRC and the IAM. On January 25, 1963, (copy attached to Mr. Mason's affidavit as Exhibit M) the carrier addressed a letter to Chairman Edwards asking the Board to reconsider its denial for a hearing contained in our letter of January 17, 1963. In executive session on January 31, 1963, the Board gave full consideration to the position of the carrier with respect to the craft or class of employees involved in this dispute, and on February 4, 1963, addressed a letter to the carrier fully outlining its reason for again denying their request for a hearing on the craft or class (copy attached to Mr. Mason's affidavit as Exhibit N).

9. On January 18, 1963, United addressed a letter (copy attached to Mr. Mason's affidavit as Exhibit O) to Board Member O'Neill taking the position the Board should use a form of ballot which would provide a space for a vote for "no representation". The Board replied on January 24, 1963 (copy attached to Mr. Mason's affidavit as Exhibit R), advising the Board sees no reason to deviate from its customary form of ballot in the current dispute. This form of ballot has been used by the Board in over 3,400 representation elections among various crafts or classes of railroad and airline employees since 1934, among which were several elections involving other classes of United employees, at which times the company made no objection to the form of ballot such as they have now raised. On February 1, 1963, the carrier wrote Chairman Edwards (copy attached to Mr. Mason's affidavit as Exhibit S) referring to our letter of January 24, 1963, and requesting reconsideration of the decision made in our letter to the carrier of January 24, 1963, supra. This request was again given careful consideration by the Board and under date of February 7, 1963, the Board replied to the carrier (copy attached to Mr. Mason's affidavit as Exhibit T) reiterating their reasons for denying the carrier's request for a change in the form of ballot.

10. During this exchange of correspondence the Mediator was in Chicago waiting for the carrier to furnish the list of employees which would enable him to proceed with plans for conducting the election. On February 4, 1963, the Mediator again inquired about the status of preparation of the eligible list and was advised by the carrier that the task was a large one and the list would not be completed until approximately February 11, 1963. On that date the Mediator further inquired concerning the status of the list and was advised by the carrier's officers that they had decided to decline to prepare and furnish the list. The

carrier so notified this office by letter of same date (copy attached marked Exhibit 4). The list referred to in the second paragraph of the carrier's letter of February 11, 1963, is the one furnished the Mediator on November 27, 1962, for checking the authorization cards submitted by the BRC in support of their application and contained only the names, occupations and locations of the employees, but did not include the mailing addresses which would be required to conduct the election. The list containing the mailing addresses is the one which the carrier has refused to furnish. It will be noted the carrier advised that if the Board wished to exercise its statutory authority to make copies of relevant "books and records" of the company (Section 2, Ninth, of the Railway Labor Act, copy attached marked Exhibit 5), they would make them available to the Board's representatives at the carrier's executive offices. On February 12, 1963, the Board directed its Mediator to secure this information from the carrier's records, and he is now so engaged. On February 14, 1963, a petition dated February 11, 1963, was received from the Association for the Benefit of Non-Contract Employees purporting to represent 5,100 employees in the Customer Contact and Office and Clerical group of United. The petitioners applied for leave to intervene in Case R-3590 as a party at interest on behalf of the employees they purport to represent, and made four specific requests described on pages 2 and 3 of the petition, copy of which is attached marked Exhibit 6. The petitioners did not, however, ask leave to intervene as a candidate for representation of the employees in the craft or class involved under the Board's Rule 1206.5. Further, an examination of the authorization cards submitted by the petitioners shows the following language preceding the signature of the employee:

"I hereby authorize the hereinafter named persons

to act in my behalf as incorporators and directors for the purpose of forming and directing the affairs of a corporation to be known as an 'Association for the Benefit of Non-Contract Employees' of which I shall be a member.

"These same individuals are hereby authorized and empowered to represent me before the National Mediation Board.

"The execution of this instrument revokes any authorizations heretofore made for the appointment of a representative."

It will be observed that this language does not authorize the "Association for the Benefit of Non-Contract Employees" to represent the signatory employee for the purposes of collective bargaining under the Railway Labor Act, but only to "represent me before the National Mediation Board." As of this date the Board has taken no action on this petition.

11. The statement in paragraph 7 of the complaint that the Board stated that it would have conducted a hearing if requested to do so by a party to the proceeding, is based on a misapprehension of the Board's position, as stated in its letter of February 4, 1963. The Board has given careful consideration to whether or not a hearing is required for the purpose of determining the composition of the craft or class, and has concluded for the reasons stated in the February 4, 1963 letter that there is no necessity for holding such a hearing for the purposes of an election in this dispute.

12. Mr. Mason, beginning at paragraph No. 11 of his affidavit, protests the form of ballot used by the National Mediation Board in representation elections. This form of ballot was first authorized by the United States Railroad Labor Board in its Decision No. 218, dated July 26, 1921 (copy attached marked Exhibit 7). The ballot was later revised by the U. S. Railroad Labor Board in its Decision

No. 418, dated November 19, 1921, by omitting identifying information (copy attached marked Exhibit 8).

Following the creation of the National Mediation Board on June 21, 1934, the Board on August 4, 1934, formulated and approved rules for conducting representation elections. The ballot sanctioned by this action is attached marked Exhibit 9. The Board authorized a modification in this ballot effected July 1, 1956, copy of which is attached marked Exhibit 10.

13. The Board does not issue a certification after a representation election has been held unless a majority of these eligible to participate in the election have cast valid ballots. A valid ballot is one that is marked to indicate that the voter desires to be represented by one of the contesting organizations, or by a representative designated by the voter in the space provided on the ballot. If a ballot is blank, or is marked by the voter to indicate he does not desire representation, it is not counted as a valid ballot in determining that a majority of those eligible have participated in the election.

14. The certification is issued by the Board in compliance with its duty under Section 2, Ninth, of the Act to certify the duly designated and authorized representative of the employees in the craft or class with whom the carrier shall treat for the purposes of the Act. A sample form of certification is attached as Exhibit 11. The conditions referred to in Mr. Mason's affidavit, paragraph 17, and Mr. Hutchens' affidavit may result from the terms of the collective bargaining agreement entered into between the carrier and the duly designated and authorized representative named in the certification, but do not flow automatically from the issuance of the certification itself.

15. In paragraph 20 of Mr. Mason's affidavit mention is made of the Board's Cases R-2783, C-2252 and C-2389. The Board, in these cases, because of the unique circumstances,

exercised its discretionary authority in relation to the craft or class and authorized a vote among Stock Clerks as the most effective way to implement the purposes of the Act. In subsequent cases; the full craft or class of Clerical, Office, Stores, Fleet and Passenger Service employees as set forth in Case No. R.-1706, et al., was used in elections held under Cases R-2953, R-3013, R-3048, R-3105, R-3119, R-3165, R-3191, R-3222, R-3256, R-3278, R-3283, R-3307, R-3347, R-3365, R-3399, R-3416, R-3488, R-3535, and R-3555.

.....

E. C. THOMPSON, *Executive Secretary.*
National Mediation Board.

Subscribed and sworn to before me this.....day of.....

.....

/s/ by Notary.

Exhibit No. 1

August 27, 1962

Mr. George M. Harrison,
Grand President
Brotherhood of Railway and Steamship Clerks,
Freight Handlers, Express and Station Employes
Brotherhood of Railway Clerks Building,
Cincinnati 2, Ohio

Dear Mr. Harrison:

This will acknowledge your letter dated August 24, 1962, attaching representation application covering "Commonly known as clerical, office, stores (excluding stores employes represented as of August 24, 1962, by the International Association of Machinists), fleet (excluding fleet service employes represented as of August 24, 1962, by the International Association of Machinists) and passenger service employes," employees of United Air Lines, Inc.

We observe from the craft description that stores employees represented as of August 24, 1962, by the International Association of Machinists, and fleet service employees represented by the same Association as of the same date, are excluded from the application.

Please advise us of the significance of the date contained therein. Is it the position of your organization that employees hired in the excluded categories after August 24, 1962, would be covered by the application?

Very truly yours,

E. C. THOMPSON,
Executive Secretary

Exhibits 2 and 3 omitted.

Exhibit No. 4

UNITED AIR LINES
1200 Algonquin Road, Elk Grove Township, Illinois
Mailing Address: P. O. Box 8800, Chicago 66, Illinois
Telephone 625-1400

February 11, 1963

Executive Offices
Mr. E. C. Thompson
Executive Secretary
National Mediation Board
Washington, D. C.

Dear Mr. Thompson:

We acknowledge receipt of your letters dated February 4 and February 7, 1963, denying United's request that a public hearing be held in Case R-3590 to permit submission of evidence to the National Mediation Board, upon which the Board could base a determination of the proper grouping of employees for purposes of a representation election, and denying our request to change the form of ballot used by the Board.

You stated that United has not furnished the Mediator a list of employees involved and request that United prepare and furnish such a list. We cannot agree with this statement because United did furnish a list of employees to the Mediator on November 27, 1962. A subsequent request for an additional list was also made by the Mediator and, to date, that request has not been complied with.

We believe the Board's refusal to permit United to be a party and to hold a hearing is a denial of the minimal constitutional requirements of due process. We, therefore, plan to institute legal proceedings seeking an appropriate

court order requiring the Board to provide for a proper hearing and to change the form of ballot in Case R-3590.

Pending the outcome of such litigation, United respectfully declines to prepare and furnish the additional list requested. If, in the meantime, the Board wishes to exercise its statutory authority to make copies of relevant "books and records" of the Company, we will make them available to the Board's representative at our Executive Offices.

Very truly yours,
/s/ C. M. Mason,
Senior Vice President—Personnel.

cc: Mr. G. M. Harrison
Mr. A. J. Hayes
Mr. W. F. J. Klatte
Hon. Robert F. Kennedy, Attorney General
Hon. W. Willard Wirtz, Secretary of Labor

Exhibit 5 omitted.

Exhibit No. 6

February 11, 1963

Mr. Leverett Edwards, Chairman
National Mediation Board
Washington 25, D. C.

Re: Case R-3590.

Association for the Benefit of Non-Contract Employees.

Dear Sir:

We submit herewith on behalf of the Association for the Benefit of Non-Contract Employees and the five undersigned individuals a Petition for Relief before the National Mediation Board as follows:

1. The petitioners herein and the Association for the Benefit of Non-Contract Employees, as of this date, represent 5100 employees, in the Customer Contact and Office and Clerical group, of United Air Lines. This representation is evidenced by signed representation cards from each of said employees.

2. The petitioners hereby apply for leave to intervene in National Mediation Board Representation Case R-3590, as a party in interest on behalf of the 5100 employees who have appointed the petitioners. In addition to being granted permission to intervene, the undersigned do further request the following specific action from the National Mediation Board.

(a) That the pending election in case R-3590 be deferred until there be a re-determination of the class or craft of employees to be involved in the election.

(b) That the National Mediation Board, basing its action on information already before it, make a redetermination of the employees presently in the bargaining unit into three groups comprised of:

1. Office and clerical employees.
2. Customer contact employees.
3. Ramp and stores employees.

each of which should be determined to be a separate class or craft for purposes of this representation case, and for future representation proceedings involving these employees.

(c) In the event that insufficient facts are presently on file or if the Board declines to re-determine the class and craft on its own motion, the undersigned hereby petition the National Mediation Board to fix a time and place for a hearing, at which petitioners and all interested parties and persons may present evidence, argument and authorities bearing on that issue; and that on the evidence thus pre-

sented, the National Mediation Board re-determine the class and craft as requested.

(d) In addition to the foregoing and notwithstanding the ultimate determination of class and craft of the National Mediation Board in Case R-3590 petitioners hereby request the National Mediation Board to prepare and use in this representation election, a form of ballot which provides on its face, a place for employees to vote affirmatively that there be no bargaining agent elected to represent their class or craft. This request is based on National Mediation Board practice of using ballots which provide the voter only the opportunity of choosing between bargaining agents.

(e) In the event that the National Mediation Board declines to use a ballot as requested, (i.e. a ballot providing a place for a "no-union" vote), then petitioners request the Board to issue a statement to petitioners, in advance of the election, explaining how a voter may register as his choice that no union be certified to represent him.

3. The request for re-determination of the class and craft is based upon numerous reasons, including the following, each of which will be proved by petitioners with appropriate evidence and authority in the event of a hearing. (1) The class and craft heretofore established by the National Mediation Board for this election includes approximately 12,500 employees of United Air Lines in widely different job categories. There is no history of collective bargaining common to these diverse groups. In fact, one group (ramps and stores) is presently unionized, while the others (customer contact and office and clerical) have never been unionized in the system. (2) Determination of customer contact and office and clerical employees to be separate classes and crafts is easily accomplished because they are readily identifiable units under both company personnel procedures and nature of work performed.

(3) The National Mediation Board determination in R-1706, January 31, 1947 was prior to the significant post war operational developments of the airlines industries. These developments show that office and clerical, ramp and stores employees and customer contact employees are separate classes and crafts and should be treated as such. (4) The employees in these classes and crafts do not desire to be joined in one bargaining unit. (5) There is widely different job-training in the different job categories. (6) The nature of their work is significantly different. (7) There is no aspect of interchangeability of personnel between the different job classifications. (8) Vital interests of each category prevents fair representation of all three groups by one bargaining agent without a serious conflict of interest or a potential conflict of interest.

Copies of this petition are being sent to the Brotherhood of Railway Clerks, International Association of Machinists and United Air Lines. It is requested that all communications regarding this petition be sent to the undersigned in care of the Association for the Benefit of Non-Contract Employees, 244 Kearny Street, San Francisco, California.

Respectfully submitted,

JAMES K. LAMONA,
RALPH C. JOHNSON,
PHYLLIS RUFFNER,
PATRICIA H. LEAHY,
HELEN M. CRISMAN,
Association for the Benefit of Non-Contract Employees,
By JAMES F. SHEAHAN,
President.

Exhibit 7

Pennsylvania System Machinists' Apprentices', and Helpers' Official Ballot

A dispute exists between the carrier and System Federation No. 90 of the Railway Employees' Department of the A. F. of L. as to who the employees in the craft above named desire to be represented by in the conference to negotiate rules and working conditions.

The machinists, apprentices, and helpers, irrespective of membership or non-membership in any organization, are therefore to be given an opportunity to designate, by a majority vote, the representation of their choice, as follows:

Those in favor of either of the following will designate their choice by marking an X in the square set out for that purpose.

Those who desire to be represented by System Federation No. 90, Railway Employees' Department of the A. F. of L., mark an X in this square.....☐

Those who desire to be represented by the American Federation of Railroad Workers, mark an X in this square .....☐

Those who desire to be represented by individuals or by any other organization, write the name of such individual or organization here.....☐

.....

and mark an X in this square.

Place employed .....

Craft .....

Actually working .....

Laid off or furloughed .....

Name of voter .....

Exhibit No. 8

Long Island Railroad Company Crossing Watchmen. Official Ballot

A dispute exists between the carrier and the United Brotherhood of Maintenance of Way Employees and Railway Shop Laborers as to whom the crossing watchmen desire to be represented by in conference to negotiate rules and working conditions.

The crossing watchmen, irrespective of membership or nonmembership in any organization, are to be given an opportunity to designate by a majority vote the representatives of their choice as follows:

Those in favor of either of the following will designate their choice by marking an X in the square set out for that purpose:

Those who desire to be represented by the Long Island Railroad Crossing Watchmen's Association, mark an X in this square ..... ☐

Those who desire to be represented by the United Brotherhood of Maintenance of Way Employees and Railway Shop Laborers, mark an X in this square..... ☐

Those who desire to be represented by individuals or by any other organization, write the name of such individual or organization here .....
..... ☐
and mark an X in this square.

Exhibit No. 9

OFFICIAL BALLOT

of

MECHANICAL DEPARTMENT EMPLOYEES OF
THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

June 4-18, 1934

Dispute exists with respect to representation of the Mechanical Department employees as to whether a majority desire representation by the Association of Mechanical Crafts, Helpers and Apprentices, D. & R. G. W. R. R., or desire representation by System Federation No. 10, Railway Employees' Department, American Federation of Labor, and it has been agreed that a secret ballot be taken to determine the fact.

If You Desire Representation by the Association of Mechanical Crafts, Helpers and Apprentices, D. & R. G. W. RR., Mark an "X" in This Square..... ☐

If You Desire Representation by System Federation No. 10, Railway Employees' Department, American Federation of Labor, Mark an "X" in This Square... ☐

If You Desire Representation by Any Other Organization or Individual, Write in Name and Mark an "X" in This Square..... ☐

[The writing of more than one X will make the ballot illegal]

Do Not Sign Your Name

Exhibit No. 10

OFFICIAL BALLOT

of

SHEET METAL WORKERS, HELPERS AND APPRENTICES

employees of

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD CO.

R-2962

June 1956 to July 1956

A dispute exists among the above named craft or class of employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of the Railway Labor Act, and the National Mediation Board is taking a SECRET BALLOT in order to ascertain and to certify the name or names of organizations or individuals designated and authorized as representatives for purposes of the Act.

INSTRUCTIONS FOR VOTING.

Mark an "X" in the square of your choice. Marks in more than one square make ballot void.

If you desire to be represented by:
Sheet Metal Workers' International Association
(Functioning through System Federation No. 76, Railway Employes' Department, AFL)
Mark an "X" in this square..... ☐

If you desire to be represented by:
United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of U. S. and Canada—AFofL.
Mark an "X" in this square..... ☐

If you desire to be represented by:
Any Other Organization or Individual
Write name of such organization or individual on the line below,

.....AND,

Mark an "X" in this square..... ☐

NOTICE.

1. This is a SECRET BALLOT. Do not sign your name.

2. Return this ballot in its entirety. Do not cut, mutilate or otherwise spoil it. If you do so, return ballot at once to the Mediator and obtain a new one.

Exhibit No. 11

NATIONAL MEDIATION BOARD

Washington

In the matter of Representation of Employees of the Southern Airways, Inc. Clerical, Office, Fleet and Passenger Service Employees	Case No. R-2953. February 13, 1956.

Dismissal.

The services of the National Mediation Board were invoked by the Air Line Agents Association, International, to investigate and determine who may represent for purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, Clerical, Office, Fleet and Passenger Service Employees, employees of the Southern Airways, Inc.

At the time application was received, these employees were not represented by any organization or individual.

The Board assigned mediator A. Alfred Della Corte to investigate.

FINDINGS.

The investigation disclosed that a dispute existed among the employees concerned and by direction of the Board, the mediator conducted an election by U. S. mail ballot, using an agreed to eligible list to determine the employee's representation choice.

The following is the result of the election as reported by Thomas A. Tracy, who was assigned to count the ballots in

this case and attested on July 22, 1955, by a representative of the applicant organization.

Number of employees voting:

	Air Line Agents Association, Int'l.	Any Other Org. or Individual	Void Ballots	Number of Employees Eligible
Clerical, Office, Fleet and Passenger Service Employees	42	0	0	207

The National Mediation Board further finds that the carrier and employees in this case are respectively, a carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein, and that the interested parties were given due notice of investigation, whereupon the National Mediation Board finds that:

On the basis of the investigation and report of election, which shows that less than a majority of eligible employees participated in the election, the National Mediation Board finds no basis for Certification and the application is therefore dismissed.

By order of the National Mediation Board.

E. C. THOMPSON,
Executive Secretary.

NATIONAL MEDIATION BOARD

Washington

In the Matter of Representation of Employees of the Aloha Airlines, Inc. Clerical, Office, Stores, Fleet and Passenger Service Employees	Case No. R-3535. March 16, 1962.

Certification.

The services of the National Mediation Board were invoked by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, the craft or class of Clerical, Office, Stores, Fleet and Passenger Service Employees, employees of Aloha Airlines, Inc.

At the time application was received, these employees were represented by the International Association of Machinists, AFL-CIO, Airline Division.

The Board assigned Mediator Clarence G. Eddy to investigate.

FINDINGS,

The investigation disclosed that a dispute existed among the employees concerned and by direction of the Board, the mediator was instructed to conduct an election by secret ballot, using an agreed to eligible list to determine the employees' representation choice.

The following is the result of the election as reported by the mediator and attested on March 8, 1962, by representatives of the contesting organizations who acted as observers.

Number of employees voting:

	International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America	International Association of Machinists, AFL-CIO, Airline Division	Void Ballots	Number of Employees Eligible
Clerical, Office, Stores, Fleet and Passenger Service Employees	93	97	1	212

The National Mediation Board further finds that the carrier and employees in this case are, respectively, a carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdition over the dispute involved herein; and that the interested parties were given due notice of investigation.

CERTIFICATION.

Therefore, the National Mediation Board certifies that the International Association of Machinists, AFL-CIO, Airline Division, has been duly designated and authorized to continue to represent for the purpose of the Railway Labor Act, the craft or class of Clerical Office, Stores, Fleet and Passenger Service Employees, employees of Aloha Airlines, Inc., its successors and assigns.

By order of the National Mediation Board.

E. C. THOMPSON,
Executive Secretary.

IN THE UNITED STATES DISTRICT COURT

For the District of Columbia.

United Air Lines, Inc., *Plaintiff*, *vs.* National Mediation Board; Leverett Edwards, Individually and as Chairman of the National Mediation Board; Francis A. O'Neill, Jr., Individually and as Member of the National Mediation Board, *Defendants.*	Civil Action No. 402-63.

Supplemental Affidavit of Charles M. Mason in Support of Plaintiff's Motion for Preliminary Injunction.

STATE OF ILLINOIS
COUNTY OF COOK } ss.

CHARLES M. MASON, being first duly sworn, on oath deposes and says:

1. I am Senior Vice President, Personnel, United Air Lines, Inc. ("United").

2. The original petition filed with the National Mediation Board ("Board") on August 24, 1962, by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees ("Brotherhood") pursuant to Section 2, Ninth of the Railway Labor Act, alleged that there was a representation dispute among a craft or class of employees consisting of United's clerical, office, stores, fleet and passenger service employees. That petition expressly excluded from the proposed craft or class all of the stores and fleet service (ramp and store) em-

ployees represented at United by the International Association of Machinists (I. A. M.) as of August 24, 1962.

3. On October 5, 1962, the Brotherhood amended its original statement of the craft or class to substitute a comprehensive group of United employees described as "clerical, office, stores, fleet and passenger service employees" without exclusion of any of the ramp and store employees represented by the I. A. M.

4. I am informed and believe, and upon such information and belief, state that the Brotherhood and the I. A. M. subsequently discussed the composition of the craft or class with the Board and the Board advised them that if the two unions would agree to exclude from the craft or class the ramp and store employees then represented by the I. A. M., the Board would proceed to conduct an election among the remaining employees in the craft or class described in the Brotherhood's amended petition. This belief is based upon a letter dated November 30, 1962 from Mr. Frank Heisler, Air Line Coordinator, I. A. M. to Mr. C. L. Dennis, Grand Vice President, B. R. C. (a copy of which is attached hereto as Exhibit A) stating, in pertinent parts as follows:

> "After discussing this matter further with the National Mediation Board, we were assured that if an agreement could be reached between your Organization and our Organization, which would exclude all employees in the craft or class presently represented by our Organization, the Board would conduct an election among the remaining employees in the craft or class without establishing a precedent that could be used by any other organization on any other property. You were advised that our Organization would be agreeable to entering into such an agreement; furthermore, that if such an agreement were entered into that the members of our Organization employed by United Air Lines would render all possible assistance to your Organization in the event that an election was conducted among those employees of United Air Lines not presently represented by any organization."

5. Copies of Exhibit A were distributed by the Brotherhood during the course of its election campaign to ramp and store employees represented by the I. A. M. together with a cover letter (a copy of which is attached hereto as Exhibit B) from Mr. Patrick T. Clancy, Chairman, Air Transportation Division, B. R. C.-U. A. L. Organizing Committee.

6. I am informed and believe, and upon such information and belief state that the Brotherhood and the I. A. M. failed to agree that the employees represented by the I. A. M. should be excluded from the craft or class. Accordingly, the Board has indicated that it will proceed to conduct an election in accordance with the craft or class designation contained in the Brotherhood's amended petition.

CHARLES M. MASON.

Subscribed and sworn to before me this .....day of ....., 1963.

.....

Notary Public.

Exhibit A

INTERNATIONAL ASSOCIATION OF MACHINISTS
1300 Connecticut Ave. Washington 6, D. C.

Office of the General Vice President

Adams 2-6309

49-United

November 30, 1962,

Subj: United Air Lines, Inc., Representation Case, No. R-3590.

Mr. C. L. Dennis,
Grand Vice President,
Brotherhood of Railway and Steamship Clerks,
9 South Clinton St., Room 818,
Chicago 6, Illinois.

Dear Mr. Dennis:

As you will recall during our meeting of November 19, 1962 in the Americana Motel, Des Plaines, Illinois, which was also attended by our Grand Lodge Representative Paul Burnsky, we reviewed in detail all of the aspects pertaining to the application filed by your Organization with the National Mediation Board involving the craft or class of Clerical, Office, Stores, Fleet and Passenger Service employees on United Air Lines.

As the record will reveal, your original application appeared to exclude certain employees as represented by our Organization. In view of the attempt on the part of the Teamsters Organization to raid our Organization on other air carriers involving a part of the aforementioned

craft, or class, our Organization took the position with the National Mediation Board that your original petition did not conform with the Board's findings as established in Case 1706, et al.

Subsequent thereto, after a considerable exchange of correspondence, your Organization amended its original petition to include the entire craft or class of Office, Stores, Fleet and Passenger Service employees, which would in fact cover all of the employees presently represented by our Organization, involving certain classifications such as Stock and Stores employees, Ramp Service Employees and Janitorial employees.

After discussing this matter further with the National Mediation Board, we were assured that if an agreement could be reached between your Organization and our Organization, which would exclude all employees in the craft or class presently represented by our Organization, the Board would conduct an election among the remaining employees in the craft or class without establishing a precedent that could be used by any other organization on any other property. You were advised that our Organization would be agreeable to entering into such an agreement; furthermore, that if such an agreement were entered into that the members of our Organization employed by United Air Lines would render all possible assistance to your Organization in the event that an election was conducted among those employees of United Air Lines not presently represented by any organization.

You advised that you would give consideration to the aforementioned suggestion, but that you would have to clear the matter with your general headquarters in Cincinnati. On the afternoon of November 20, 1962, at approximately 3:30 P.M., you called me at the Americana Motel and advised me of your discussions with Grand President Harrison and that it was his decision that your

Organization could not agree to the proposal as submitted to you on November 19th. You further advised that it was the intent of your Organization to proceed in behalf of the entire craft or class of Office, Clerical, Stores, Fleet and Passenger Service employees, which would include those employees presently represented by our Organization.

Please advise as to whether or not the contents of this letter generally covers our discussion.

Fraternally yours,
FRANK HEISLER,
Airline Coordinator.

cc: Burnsky,
FH/ac.

Exhibit B

AIR TRANSPORT DIVISION,
BROTHERHOOD OF RAILWAY CLERKS.
1015 Vine Street,
Cincinnati 2, Ohio.

Geo. M. Harrison, *Grand President*

To I. A. M. Members on U. A. L. in The Ramp Service, Stores, Janitors, Cleaning Women and Station Wagon Drivers' Groups.

Hi . . .

Did J. L. Reeves deliberately lie to you, his membership, in "Reeves' Rantings" (No. 21-62) or was this just another case of him being uninformed?

Perhaps the I. A. M. just doesn't give him all of the information figuring he wouldn't know what to do with it anyway.

They sure have nerve asking you to support them when the best they can offer you as a General Chairman is either a deliberate liar or such a dimwit they don't even keep him informed—maybe he's both and they are aware of it.

We are attaching hereto a copy of a letter to our Vice-President, C. L. Dennis, from Mr. Heisler, I. A. M. Airline Co-ordinator, under date of November 30, 1962. This letter covers the situation in a general way and paragraphs 4 and 5 prove Reeves a liar, as it was written prior to December 21, 1962, on which date he issued "Reeves Rantings" (No. 21-62).

We are sure that after you read it you will support our organization while you wonder just what Reeves is doing in the labor movement.

This is the first—and we hope the last—of these letters, as we would rather work at organizing our class or craft on United than waste time arguing with the Reeves' of the Labor Movement to the great delight of the airline officials.

Sincerely and fraternally,

PATRICK T. CLANCY, *Chairman*,
Air Transport Division, B.R.C.
U.A.L. Organizing Committee.

Affidavit.

CITY OF WASHINGTON
DISTRICT OF COLUMBIA } ss.

FRANCIS A. O'NEILL, JR., being first duly sworn, deposes and says:

1. I am a Member of the National Mediation Board, and as a part of my official duties, am familiar with the representation dispute among certain employees of United Air Lines, Inc. (United) covered by Board Case R-3590, and make this affidavit in reply to the affidavit of Charles M. Mason, executed March 14, 1963.

2. During November 1962, I had discussions with Mr. Frank Heisler, Airline Coordinator of the International Association of Machinists (IAM), concerning the composition of the craft or class of United's employees covered by the application for the Board's services made by the Brotherhood of Railway and Steamship Clerks (BRC) in this case. I do not recall any discussions of this subject with Mr. C. L. Dennis, Vice Grand President of the BRC. I am not aware of any discussions of this subject between the other member of the Board, Chairman Leverett Edwards, and Messrs. Heisler and Dennis, nor with anyone in an official capacity with the Board. The Board at that time consisted of two members, the third membership being vacant due to resignation of Mr. Robert O. Boyd, effective October 14, 1962.

3. In my discussion with Mr. Heisler of the IAM, I advised him that if the two unions would agree to exclude from the craft or class in dispute the ramp and stores employees then represented by the IAM, the Board would give consideration to that situation in connection with any election that might be held under Case R-3590. A deci-

sion on this question would require action by a quorum of the Board. Since no agreement was made between the two unions, the question did not come before the Board for action.

FRANCIS A. O'NEILL, JR.

Subscribed and Sworn To before me this 20th day of March 1963.

WILLIAM B. BINSWANGER.

UNITED STATES DISTRICT COURT

For the District of Columbia

United Air Lines, Inc.,
Plaintiff,
vs.
National Mediation Board, et al.,
Defendants.
Civil No. 402-63.

Order

Upon consideration of defendants' motion to dismiss or in the alternative for summary judgment, plaintiff's motion for preliminary injunction, and the Court having considered the pleadings, affidavits and exhibits of record, and the parties having filed memoranda of points and authorities in support of and in opposition to said motions, and after hearing oral argument by counsel for the respective parties in open court, and the Court having determined that there is no genuine issue of material fact it is by the Court this 25th day of March, 1963,

ORDERED: that defendants' motion for summary judgment be, and the same is, hereby granted; and the complaint be, and the same hereby is, dismissed with prejudice, and it is

FURTHER ORDERED: that plaintiff's motion for preliminary injunction be, and the same hereby is dismissed as moot.

BURNITA SHELTON MATTHEWS,
United States District Judge.

Seen
STUART BERNSTEIN.

IN THE UNITED STATES DISTRICT COURT
For the District of Columbia

United Air Lines, Inc.,
Plaintiff,
vs.
National Mediation Board; Leverett Edwards, Individually and as Chairman of the National Mediation Board; Francis A. O'Neill, Jr., Individually and as Member of the National Mediation Board,
Defendants.

Civil Action No. 402-63.

Notice of Appeal

Notice is hereby given this 27th day of March, 1963, that plaintiff United Air Lines, Inc. appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered March 25, 1963, granting defendants' motion for summary judgment.

H. TEMPLETON BROWN,
STUART BERNSTEIN,
EDWARD R. LEV,
231 South LaSalle Street,
Chicago 4, Illinois.

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[fol. 146]

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,777

UNITED AIR LINES, INC., Appellant,

v.

NATIONAL MEDIATION BOARD, et al., Appellees.

No. 18,068

NATIONAL MEDIATION BOARD, et al., Appellants,

v.

ASSOCIATION FOR THE BENEFIT OF NON-CONTRACT EMPLOYEES, Appellee.

No. 18,072

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES, Appellant,

v.

ASSOCIATION FOR THE BENEFIT OF NON-CONTRACT EMPLOYEES, Appellee.

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[fol. 147] Mr. Stuart Bernstein, with whom Mr. James Francis Reilly was on the brief, for appellant in No. 17,777.

Mr. Milton Kramer, with whom Mr. James L. Highsaw, Jr., was on the brief, for appellant in No. 18,072.

Mr. Howard E. Shapiro, Attorney, Department of Justice, with whom Assistant Attorney General Douglas, Messrs. David S. Acheson, United States Attorney, and Morton Hollander, Attorney, Department of Justice, were on the brief, for appellees in No. 17,777 and for appellants in No. 18,068.

Mr. Alex L. Arguello, of the bar of the Supreme Court of California, pro hac vice, by special leave of court, with whom Mr. Jerome C. Muys was on the brief, for appellee in No. 18,068 and No. 18,072. Mr. David Booth Beers also entered an appearance for appellee in No. 18,068 and No. 18,072.

Mr. John E. Stephen filed a brief on behalf of Air Transport Association of America, as amicus curiae, urging reversal on No. 17,777.

Mr. William G. Mahoney filed a brief on behalf of Railway Labor Executives' Association, as amicus curiae, uring affirmance in No. 17,777.

OPINION—Decided March 12, 1964

Before WILBUR K. MILLER, BASTIAN and WRIGHT, Circuit Judges.

PER CURIAM: These three appeals have been consolidated by this court. In our view Nos. 18,068 and 18,072 should be disposed of first, although they are later in their numbering.

In No. 18,068, the National Mediation Board appeals from an order issued by the District Court which, among other things, restrains the Board from conducting a representation election.

[fol. 148] In No. 18,072, the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes appeals from the same order.

The order appealed from is as follows:

"... ORDERED That the Board is hereby permanently enjoined from conducting any election among the 'Clerical, Office, Stores, Fleet and Passenger Service employees' of United Air Lines, Inc., in which the

form of the ballot does not permit a voting employee to cast a vote against collective bargaining representation, and it is

"FURTHER ORDERED That the plaintiff's request that the Board shall conduct a hearing relating to the question of the appropriateness of class or craft of employees among whom the election was to be held, at which hearing the plaintiff could be heard as a party in interest, shall be and the same is hereby remanded to the Board for further consideration in the light of the Court's conclusion that the Railway Labor Act, 45 U.S.C. § 151 et seq. gives employees a right to have a ballot on which they may express a preference for no collective bargaining representation."

The opinion of Judge Youngdahl, of the District Court, is found in 218 F.Supp. 114 (1963) and is adopted by us as the opinion of this court. It follows that the judgment of the District Court in these cases must be affirmed.

In No. 17,777, United Air Lines, Inc. appeals from the dismissal by the District Court of its action filed to enjoin the election proposed by the National Mediation Board. The grounds for dismissal of the action are not stated in the court's order but, as one of the grounds urged was lack of standing on the part of United Air Lines, we assume it was on this ground that the suit was dismissed. The close question as to United's standing, about which there is a dearth of authority, causes us concern. We have decided, however, not to disturb the Dis- [fol. 149] trict Court's dismissal, because our decision in the other two cases affords the relief concerning the form of the ballot which United sought.

No. 18,068 is affirmed.

No. 18,072 is affirmed.

No. 17,777 is affirmed.

WRIGHT, Circuit Judge, concurring in part and dissenting in part: In No. 17,777 of this consolidated litigation, United Air Lines appeals from the District Court's refusal to enjoin the National Mediation Board from conducting a representation election under Section 2, Ninth, of the Railway Labor Act. 48 Stat. 1188, 45 U.S.C. § 152, Ninth. In Nos. 18,068 and 18,072, the National Mediation Board and the Brotherhood of Railway and Steamship Clerks appeal from the granting of an injunction against the Board, by the same court through a different judge, restraining it from conducting the same election which is the subject of the United Air Lines suit. The second injunction action was brought[1] by certain employees of United Air Lines who claim to want to represent themselves *individually* in their labor negotiations with their employer. I agree with the court that in No. 17,777 the United Air Lines injunction proceeding was properly dismissed by the District Court. I respectfully dissent from its affirmance in Nos. 18,068 and 18,072 upholding the issuance of the injunction against the National Mediation Board.

Since the United Air Lines suit and the action brought by some of its employees appear to have a common inspiration as well as common issues, I shall treat them to- [fol. 150] gether. Both United and its appellee employees, here called ABNE,[2] urge two grounds for enjoining the Board from performing its duty under the Act: (1) The Board improperly determined the bargaining unit craft or class to be "clerical, office, stores, fleet and passenger service employees"; and (2) the Board proposes to use in the election a form of ballot which does not provide a space for the employee to vote against representation.

The craft or class recognized by the Board as the proper bargaining unit for the proposed election is the same as that recognized in its 1947 proceeding. Case No. R-1706, Determinations of Craft or Class of the National Mediation Board (1947). There has been no change in the classification since that time. After considering the

[1] The employees' action was brought after United Air Lines' application for an injunction was denied.

[2] Association for the Benefit of Non-Contract Employees.

representations by United as to the need for change, the Board determined that it would follow its prior ruling. Thus United and ABNE would have the court reweigh these class considerations and substitute its judgment for the Board's.

With reference to the form of ballot, space is provided to vote for either of the competing unions.[3] A third blank space is indicated for voting for a representative not named on the ballot. That same blank space may be used for voting for "no union" or "no representation." Section 2, Fourth,[4] of the Railway Labor Act provides, in part: "The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act." Thus, if a majority of the craft or class actually votes for representation, a representative may be selected. [fol. 151] If a majority fails to vote, the Board may not certify a representative. *Radio Officers' Union* v. *National Mediation Board,* 86 U.S. App. D.C. 319, 181 F.2d 801 (1950). In addition, the admitted practice of the Board is to add the number voting "no union" to the number not voting in determining whether a majority of the employees eligible to vote actually voted for representation.

The District Court's action enjoining the Board from conducting the election here is in the teeth of a host of cases from the Supreme Court, from this court, and from the Circuit Courts around the country. In the interest of economy, I shall simply list *seriatim* the reasons why this injunction should not have been issued and briefly comment on each.

1. The District Court was without jurisdiction to enjoin the National Mediation Board from conducting an election to resolve the representation dispute at United Air Lines. *Switchmen's Union* v. *National Mediation Board,* 320 U.S. 297 (1943). In upholding the action of the Board

[3] The two competing unions shown on the ballot were the Brotherhood of Railway and Steamship Clerks and the International Association of Machinists.

[4] 48 Stat. 1187, 45 U.S.C. § 152, Fourth.

against union attack, the Court in *Switchmen's Union* said, "* * * if Congress had desired to implicate the federal judiciary and to place on the federal courts the burden of having the final say *on any aspect* of the problem, it would have made its desire plain." 320 U.S. at 303. (Emphasis added.) Unlike the National Labor Relations Act,[5] the Railway Labor Act has no provision for judicial review. *Switchmen's Union* was reinforced by three other cases[6] handed down by the Supreme Court [fol. 152] at the same term, and the force of these decisions has continued, unmodified by Congress, down to the present day.[7]

2. The ballot which the District Court has ordered changed before an election can be conducted has been used by the Board and its predecessor, the Railway Labor Board, since 1921 in over 3,400 elections. In the 43 years since 1921, Congress has not indicated the slightest

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[5] 49 Stat. 453; 29 U.S.C. § 159(d).

[6] *General Committee of Adjustment* v. *Missouri-Kansas-Texas R. Co.*, 320 U.S. 323 (1943); *General Committee of Adjustment* v. *Southern Pacific Co.*, 320 U.S. 338 (1943); and *Brotherhood of Railway & Steamship Clerks, etc.* v. *United Transport Service Employees*, 320 U.S. 715 (1943) (*per curiam*).

[7] *Order of Railway Conductors* v. *National Mediation Bd.*, 79 U.S.App.D.C. 1, 141 F.2d 366, *cert. dismissed*, 323 U.S. 166 (1944); *Radio Officers' Union* v. *National Mediation Board, supra; Rutas Aereas Nacionales, S.A.* v. *Edwards*, 100 U.S.App.D.C. 366, 244 F.2d 784 (1957); *Decker* v. *Venezolana*, 103 U.S.App.D.C. 301, 258 F.2d 153 (1958); *Air Line Stewards & Stewardesses Ass'n* v. *National Mediation Board*, 111 U.S.App.D.C. 126, 294 F.2d 910 (1961), *cert. denied*, 369 U.S. 810 (1962); *UNA Chapter, Flight Eng. I. Ass'n* v. *National Mediation Bd.*, 111 U.S.App.D.C. 121, 294 F.2d 905 (1961), *cert. denied*, 368 U.S. 956 (1962); *WES Chapter, Flight Eng. Int. Ass'n* v. *National Mediation Bd.*, 114 U.S.App.D.C. 229, 314 F.2d 234 (1962). Among decisions from other courts are *Brotherhood of Ry. & S. Clerks, etc.* v. *Virginian Ry. Co.*, 4 Cir., 125 F.2d 853 (1942); *Rose* v. *Brotherhood of Railway and Steamships Clks.*, 4 Cir., 181 F.2d 944, *cert. denied*, 340 U.S. 851 (1950); *Flight Engineers' Inter. Ass'n* v. *Eastern Air Lines, Inc.*, 2 Cir., 311 F.2d 745, *cert. denied*, 373 U.S. 924 (1963); *Ruby* v. *American Airlines, Inc.*, 2 Cir., 323 F.2d 248 (1963), *cert. pending.*

disapproval of the Board's election machinery—including its ballot. Moreover, no court, except the District Court here,[8] in the ABNE case but *not* in the United case, has found this ballot unlawful.[9] And this court has approved its use as a proper exercise of the Board's discretion within the intendment of the Act. *Decker* v. *Venezolana, supra* Note 7 (see briefs).[10]

[fol. 153] 3. The Board's craft or class determination is unreviewable. This court has so held in at least four cases, one at the last term of court. *WES Chapter, Flight Eng. Int. Ass'n* v. *National Mediation Bd., supra* Note 7; *Air Line Stewards & Stewardesses Ass'n* v. *National Mediation Board, supra* Note 7; *UNA Chapter, Flight Eng. I. Ass'n* v. *National Mediation Bd., supra* Note 7; *Radio Officers Union* v. *National Mediation Board, supra.* The Fourth Circuit, in *Rose* v. *Brotherhood of Railway and Steamship Clks., supra* Note 7, 181 F.2d at 946, summed it up well:

> "In the light of the decisions of the Supreme Court, there can be no doubt that the effect of this statute

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[8] The ABNE and United Cases were heard by different District Court judges.

[9] But *cf. McNulty* v. *National Mediation Board,* N.D.N.Y., 18 F.Supp. 494 (1936).

[10] The *Decker* case involved the jurisdiction of the District Court to review the action of the Mediation Board. Paragraph 8 of the amended complaint there raised the same issue which is raised here:

> "[Due process was denied] in that the ballot used in the election had no space on it for a vote to the effect that the employee did not want anyone, defendant I.A.M. or anyone else, to represent him."

That issue was preserved on appeal, in paragraph 1b of the Questions Presented:

> "• • • the right to [due process] was denied by use of a ballot which gave no way to vote against representation by any bargaining agent."

Affirming the dismissal of the complaint, this court stated, "We hold that the prohibition of the Switchmen's case applies in the circumstances of this case." 103 U.S.App.D.C. at 302, 258 F.2d at 154.

was to vest in the Mediation Board exclusive jurisdiction over the *certification of bargaining agents, the determination of bargaining units and the classification of employees for the purposes of bargaining.* And it is equally clear that the *exercise of discretion by the board with respect to such matters is not subject to review by the courts.* • • • " (Emphasis added.)

4. United Air Lines lacks standing to challenge the [fol. 154] Board's action. The purpose of the Railway Labor Act is to guarantee employees complete freedom to organize—freedom from employer interference. This Act was passed, as the Government asserts, "to put an end to the harmful consequences of • • • individual dealing between large carriers and small employees. *Machinists* v. *Street*, 367 U.S. 740, 760; *Virginian Ry.* v. *Federation*, 300 U.S. 515, 553; *Texas & N.O. R. Co.* v. *Brotherhood of Railway and Steamship Clerks*, 281 U.S. 548, 570." United's obligation under the Act is *not "to interfere in any way with the organization of its employees."* Railway Labor Act, § 2, Fourth. (Emphasis added.) And this obligation includes refraining from filing, or inspiring, litigation designed to block or delay representation elections conducted by the National Mediation Board.

5. There is no *Leedom* v. *Kyne*, 358 U.S. 184 (1958), question here. It is not even suggested that the Board has acted contrary to a plainly and expressly defined statutory duty, nor has the Board here conceded that it has so acted, as in *Leedom*. This principle has been expounded recently by this court in a series of cases so there should be no doubt about its application. *WES Chapter, Flight Eng. Int. Ass'n* v. *National Mediation Bd.*, *supra* Note 7; *Air Line Stewards & Stewardesses Ass'n* v. *National Mediation Board*, *supra* Note 7; *UNA Chapter, Flight Eng. I. Ass'n* v. *National Mediation Bd.*, *supra* Note 7. In the *UNA* case we said (111 U.S.App.D.C. at 124, 294 F.2d at 908):

"Appellant urges, however, that jurisdiction exists under the Supreme Court's decision in Leedom v. Kyne, 1958, 358 U.S. 184, 79 S.Ct. 180, 3 L.Ed.2d 210.

We cannot agree. In Leedom the Supreme Court carefully differentiated Switchmen's Union from the case before it, pointing out that the latter did not involve 'review' of agency action, but the striking down of action *in excess of delegated powers, in flat violation of the controlling statute*—there the Labor Man- [fol. 155] agement Relations Act, 29 U.S.C.A. § 141 et seq. See 358 U.S. at pages 188-190, 79 S.Ct. at pages 183-184. It should be noted, also, that in Leedom v. Kyne the National Labor Relations Board *did not deny* that it had contravened its governing statute. See 358 U.S. at page 187, 79 S.Ct. at page 183. No such admission is made here, and appellant has not pointed out any clear statutory limitation expressed by the Railway Labor Act which has been violated by the NMB. • • • " (Emphasis added.)

6. There is a demonstrable lack of equity in the application for the injunction against holding the election. ABNE, the no-contract employees' group, claims it represents more than half of the employees eligible to vote in the election. If so, its remedy is to tell its members either not to vote or to vote for no representation. As shown, if its membership complies with these instructions, there will not be a majority voting for representation and, consequently, no representative will be certified. As indicated during oral argument, this was precisely the result of the voting—or not voting—in the representation election held recently at Lake Central Airlines. No irreparable injury is shown, therefore, if the election here is conducted as ordered by the Board.

This litigation is a throwback to the early days of the 1900's when federal courts were used to deliver individual workmen unrepresented to the bargaining table of their employer. See, *e.g.*, *Adair* v. *United States*, 208 U.S. 161 (1908); *Adkins* v. *Children's Hospital*, 261 U.S. 525 (1923). I thought those days were over.

I regret my inability to agree with my distinguished brethren in respect to this litigation. Respectfully I dissent from the court's ruling upholding this injunction.

[fol. 156] [File endorsement omitted]

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
September Term, 1963

Civil 402-63
No. 17,777
UNITED AIR LINES, INC., Appellant,
v.
NATIONAL MEDIATION BOARD, et al., Appellees.

Civil 973-63
No. 18,068
NATIONAL MEDIATION BOARD, et al., Appellants,
v.
ASSOCIATION FOR THE BENEFIT OF NON-CONTRACT EMPLOYEES, Appellee.

Civil 973-63
No. 18,072
BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES, Appellant,
v.
ASSOCIATION FOR THE BENEFIT OF NON-CONTRACT EMPLOYEES, Appellee.

Appeals from the United States District Court for the District of Columbia.

Before: Wilbur K. Miller, Bastian and Wright, Circuit Judges.

JUDGMENT—March 12, 1964

These cases came on to be heard on the records on appeals from the United States District Court for the District of Columbia, and were argued by counsel.

On Consideration Whereof, it is ordered and adjudged by this court:

(1) that the judgment of the District Court on appeal in cases Nos. 18,068 and 18,072 is hereby affirmed; and

(2) that the judgment of the District Court on appeal in case No. 17,777 is also affirmed.

Per Curiam.

Dated: March 12, 1964.

Separate opinion by Circuit Judge Wright concurring in affirmance in case No. 17,777 and dissenting from affirmance in cases Nos. 18,068 and 18,072.

[fol. 157] Petition for Rehearing of Appellant United Air Lines, Inc. covering 10 pages filed March 27, 1964 omitted from this print. It was denied, and nothing more by order of April 14, 1964.

[fol. 167] [File endorsement omitted]

IN THE UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 1963

Civil-402-63

No. 17,777

UNITED AIR LINES, INC., Appellant,

v.

NATIONAL MEDIATION BOARD, et al.

Before: Wilbur K. Miller, Bastian and Wright, Circuit Judges, in Chambers.

ORDER DENYING PETITION FOR REHEARING—April 14, 1964

On consideration of appellant's petition for rehearing, it is

Ordered by the court that appellant's petition is hereby denied.

Per Curiam.

Dated: April 14, 1964

[fol. 170] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 171]

SUPREME COURT OF THE UNITED STATES

No. 139, October Term, 1964

UNITED AIR LINES, INC., Petitioner,

vs.

NATIONAL MEDIATION BOARD, et al.

ORDER ALLOWING CERTIORARI—October 12, 1964

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted. The case is consolidated with Nos. 138 and 369 and a total of two hours is allotted for oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.